

# OAKLAND POLICE COMMISSION

## AGENDA

February 14, 2018

6:30 PM

City Council Chamber, 3<sup>rd</sup> Floor

1 Frank H. Ogawa Plaza, Oakland California

- I. **Call to Order**  
(Thomas Lloyd Smith)
- II. **Roll Call and Determination of Quorum**  
(Thomas Lloyd Smith)
- III. **Open Forum** (2 minutes per speaker)  
Thomas Lloyd Smith will call the public speakers.
- IV. **Action—Election of Chair** (Stephanie Hom)
  - a. Nominations
  - b. Discussion
  - c. Public Comment
  - d. Action
- V. **Action—Election of Vice-Chair** (Police Commission Chair)
  - a. Nominations
  - b. Discussion
  - c. Public Comment
  - d. Action
- VI. **Action—Approval of Draft Commission Meeting Minutes for January 24, 2018**  
The Police Commission Chair will offer the draft minutes for approval by the Commission.
  - a. Discussion
  - b. Public Comment
  - c. Action
- VII. **Discussion—Oakland Police Department Report**  
Chief of Police, Anne Kirkpatrick will provide an update on: the status of the February 2, 2018 case management conference in the Allen v. City of Oakland case, explanation of the OPD discipline policy including any recent updates or changes, Performance Reporting Information Metrics Environment (PRIME) system data reporting and performance issues, Immigration and Customs Enforcement cooperation, and overview of the Oakland Police Force Review Board procedures, including dates of recent and upcoming Board meetings. The Commission will confirm expectations that the Chair be included in all future Oakland Police Force Review Boards per Measure LL.
  - a. Discussion
  - b. Public Comment
- VIII. **Discussion—Oakland Police Commission Enabling Ordinance**

Stephanie Hom will give an update on meet and confer process for the enabling ordinance. The Commission will discuss potential comments in response to the City Council's proposed enabling ordinance (attached are a clean copy of the most recent version in addition to a redlined version showing changes from July 2017 published version).

- a. Discussion
- b. Public Comment

**IX. Action—Request for Qualifications for Legal Services; Community Police Review Agency**  
Mike Nisperos will provide an update on the progress of the RFQ for legal services, which requests the qualifications of non-City Attorney legal advisors interested in being appointed to provide legal services to the Community Police Review Agency related to investigations and recommended discipline for police officers.

- a. Discussion
- b. Public Comment
- c. Action

**X. Action—Change of Regular Meeting Dates for the Oakland Police Commission**  
The Commission will determine whether to change its regular meeting schedule to the second and fourth Thursdays of each month at 6:30 PM.

- a. Discussion
- b. Public Comment
- c. Action

**XI. Discussion—Commission Training Tracker**

A document to facilitate the prioritization, scheduling and tracking of Commission training sessions.

- a. Discussion
- b. Public Comment

**THE OAKLAND POLICE COMMISSION WILL ADJOURN TO CLOSED SESSION IN CITY HALL, BUILDING BRIDGES ROOM, 3<sup>rd</sup> FLOOR AND WILL REPORT ON ANY FINAL DECISIONS IN CITY COUNCIL CHAMBERS DURING THE POLICE COMMISSION'S OPEN SESSION MEETING AGENDA**

**XII. Pursuant to Government Code § 54957(b):**

- a. Public Comment

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Title: Interim Director of the Community Police Review Agency

**PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**

**XIII. Oral Report of Final Decisions Made During Closed Session & Disclosure of Non-Confidential Closed Session Discussions**

**XIV. Adjournment**

# ITEM 6



## CITY OF OAKLAND POLICE COMMISSION

### Meeting Minutes<sup>1</sup>

**Wednesday, January 24, 2018**

6:30 PM – 9:21 PM

City Hall, 1 Frank H. Ogawa Plaza, Hearing Room 1  
Oakland, CA 94612

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**I. Call to Order**  
(Thomas Lloyd Smith)

The meeting started at 6:30 p.m.

**II. Roll Call and Determination of Quorum**  
(Thomas Lloyd Smith)

Commissioners Present: José Dorado, Ginale Harris, Mike Nisperos, Edwin Prather, Thomas Smith. Quorum was met.

Alternate Commissioners Present: Maureen Benson and Andrea Dooley.

Commissioners Absent: Mubarak Ahmad and Regina Jackson.

City staff present: Stephanie Hom, Deputy City Administrator  
Allison Dibley, Deputy City Attorney, City Attorney's Office  
Deputy Chief of Police Leronne Armstrong, Oakland Police Department  
Captain of Police Paul Figueroa, Oakland Police Department  
Anthony Finnell, Interim Director, Community Police Review Agency  
Juanito Rus, Policy Analyst, Community Police Review Agency

**III. Open Forum**  
(Thomas Lloyd Smith)

Public comments were provided by the following:

John Jones III regarding continued support of the Police Commission.  
Rashidah Grinage regarding live vs recorded replay of Police Commission meeting by KTOP and changing Commission meetings to Thursday evenings in order to broadcast live on KTOP.

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<sup>1</sup> These minutes are a summarization of the actions and comments of the City of Oakland Police Commission for Wednesday, January 24, 2018.

**IV. Approval of Draft Commission Meeting Minutes for December 13, 2017, December 27, 2017, and January 10, 2018**  
(Thomas Lloyd Smith)

a. Discussion

Motion to approve the minutes from December 13, 2017, December 27, 2017, and January 10, 2018 by M. Nisperos. Seconded by E. Prather.

b. Public Comment

No Public Comments.

c. Action

Motion was amended by M. Nisperos made a correction to the draft minutes for December 13, 2017 regarding the election of Chairperson T. Smith by clarifying that there were 5 aye votes for T. Smith for Chair and 2 aye votes for G. Harris.

Motion as amended passed unanimously.

**V. Oakland Police Department Report on 50th Report of the Independent Monitor for the Oakland Police Department, Use of CompStat and/or Other Statistical Data and Management Data, Police Response Time Statistics, Use of Force Statistics, Murder Case Closure Statistics, Hiring and Discipline Status Report (general numbers for public discussion)**  
(Deputy Chief of Police Leronne Armstrong and Captain of Police Paul Figueroa)

a. Discussion

Deputy Chief Armstrong offered to respond to questions by the commissioners concerning the 50th report of the Independent Monitor for the Oakland Police Department.

G. Harris asked about technical assistance provided to the Oakland Police Department by the Independent Monitoring Team ("IMT"). Deputy Chief Armstrong responded to the process the Oakland Police Department follows to interact with the IMT including how the IMT provides technical assistance to the Oakland Police Department.

G. Harris asked questions regarding Internal Affairs Division processes and if the Oakland Police Department is following such processes. Deputy Chief Armstrong replied affirmatively to each question he was asked.

A. Dooley asked about the process for the creation of the Independent Monitoring Team ("IMT") reports. Deputy Chief Armstrong responded that the IMT provides a monthly report to the City and that the Oakland Police Department can provide a report of each task they have complied with and the outstanding tasks that it continues to work on.

M. Nisperos requested the other 49 reports prepared by the IMT. Deputy Chief Armstrong advised that the reports are posted on the City of Oakland website.

G. Harris asked about areas identified as needing auditing and review. A. Dibley responded that there are confidential provisions of the negotiated settlement agreement because it is pending litigation. The City Attorney is looking at a manner that will make pending information available to the Commission. However, Deputy Chief Armstrong can speak to what has been done.

A. Dooley wanted to know if there is a process in place for remedying issues raised in the report, such as issues with OPD not providing stop data by racial category and Internal Affairs investigations processes. Deputy Chief Armstrong when IMP raises issues in their reports OPD requires technical assistance from them to remedy those areas.

A. Dooley advised there would be a compliance hearing with the court on February 2, 2018 if anyone wished to attend.

G. Harris revisited areas that were audited or reviewed. Deputy Chief Armstrong stated all 51 tasks identified are open to auditing by the IMT.

M. Benson asked for a timeline of progress on completion of each task. A. Dooley advised not sure if such a timeline exists.

b. Public Comment

Public comments were provided by the following:

Rashidah Grinage regarding Performance Reporting Information Metrics Environment (“PRIME”) system issues and the need for a standard or benchmark to establish that OPD is no longer engaging in racial profiling.

P. Figueroa discussed issues with the performance of the PRIME system.

S. Hom discussed the PRIME vendor selection process.

Larry White regarding the Office of City Attorney, Oakland Police Department consultation and the duties of the Commission.

Paula Hawthorne the Negotiated Settlement Agreement (“NSA”) and the Oakland Police Force Review Board concerning an in-custody death by Taser investigation.

Bruce Schmiechen regarding Commission review of all IMT reports and report back to the community.

Cathy Leonard regarding the IMT report and the PRIME system.

Elise Bernstein regarding racial profiling and stops.

Michael Tigges regarding the Measure LL mandate for all complaints to be cross-filed between IAD and CPRA.

A. Finnell explained the process currently in place to meet this mandate.

Deputy Chief Armstrong commented on the data collection processes of the Oakland Police Department.

Discussion followed regarding the CPRA database and case management system under construction.

## **VI. Enabling Ordinance**

(Stephanie Hom, Deputy City Administrator)

### **a. Discussion**

S. Hom stated the enabling ordinance will go to a closed session of the City Council for review on February 6, 2018.

M. Benson asked about the process for the Commissions to provide input on the proposed the enabling ordinance. Discussion regarding the process was held.

### **b. Public Comment**

Public comments were provided by the following:

Cathy Leonard regarding the enabling ordinance and Dan Kalb.

A. Dooley commented the current process for the enabling ordinance.

A. Dibley regarding the meet and confer process.

John Jones, III regarding accountability and the Oakland Sunshine ordinance.

Susan Shawl regarding Dan Kalb and the meet and confer process.

Paula Hawthorn regarding transparency.

Elise Bernstein supported the other public comments.

Michael Tigges regarding the enabling ordinance.

Rashidah Grinage regarding provision of the red-line version of the enabling ordinance for Commission review.

T. Smith requested a red-line version of the enabling ordinance from A. Dibley.

A. Dibley indicated she would look into the matter. Discussion was held.

E. Prather requested a red-line version of the enabling ordinance from A. Dibley.

Larry White regarding the enabling ordinance.

E. Prather asked if it is possible for the Commission to receive a red-line version, redact the confidential portions and present to the community for review and discussion.

A. Dibley indicated that she believes so, but will research the issue and provide a definitive answer to the Commission.

### **c. Action**

E. Prather – Motion for the Police Commission, through the Chair, to request, from the City Council, an advance red-line version from the February 6, 2018 closed session meeting, with the Commission putting out a red-line version.

Seconded by J. Dorado.

Motion passed (unanimously).

**VII. Executive Director Hiring Process, Community Police Review Agency**  
(Ginale Harris and Mike Nisperos)

a. Discussion

Commissioner Harris asked the Commission to review the documents in the packet. Discussion followed.

b. Public Comment

No Public comment

c. Action

Motion to submit the Community Police Review Agency Executive Director job description for review by HR was made by G. Harris. Seconded by M. Nisperos.

S. Hom explained the process to bring the document to Human Resources.

G. Harris asked for a timeline.

S. Hom stated it could go to the Civil Service Board on February 15, 2018, or if too late then in March 2018.

Motion passed (unanimously).

**VIII. Recess (8:16 pm)**  
**Resumed (8:26 pm)**

**IX. Hiring Process and Budget, Oakland Police Commission Staff**  
(Thomas Lloyd Smith)

a. Discussion

Ms. Hom provided information on the hiring process for Police Commission staff, as well as budgeting information.

b. Public Comment

No public comment.

c. Action

Motion to request the City Administrator's Office to procure the list of eligible candidates and for the Chair to set-up an Ad Hoc committee to interview candidates (M. Nisperos).

Seconded by J. Dorado.

Motion passed (unanimously).

**X. Request for Qualifications for Legal Services: Community Police Review Agency  
(Mike Nisperos)**

a. Discussion

T. Smith appointed M. Nisperos to consult with the Office of the City Attorney regarding the selection of an attorney for the Community Police Review Agency. T. Smith and E. Prather recused themselves from this process.

b. Public Comment

Susan Shawl regarding alternate commissioners.

Cathy Leonard regarding the RFQ.

A. Dooley regarding the RFQ.

Larry White regarding the RFQ and potential functions of the outside attorney.

A. Dibley provided legal interpretation of City Charter section 604(e)(1) and 401(6) potential functions of the outside attorney.

Rashidah Grinage regarding the RFQ.

A. Dibley regarding the legislative history and meeting decorum.

M. Benson regarding the 2015 Swanson Report and the performance of the Oakland City Attorney's Office in representing the City of Oakland's interests.

J. Dorado regarding the Swanson Report.

M. Nisperos regarding RFQ.

**XI. Oakland Police Department All Parties Meeting  
(Mike Nisperos)**

a. Discussion

M. Nisperos provided an oral report of the Oakland Police Department All Parties meeting of all parties involving the NSA litigation. The meeting was held on January 17, 2018 includes the plaintiff's counsel, defense counsel, the Chief of Police, and the Mayor. The items on the Agenda included PRIME and stop data and AB 953, which is state legislation that requires the reporting of stop data.

b. Public Comment

Public comments were provided by the following:

Rashidah Grinage regarding racial profiling and pretext stops. She recommended a policy to have the OPD officers videotape alleged equipment failures that were responsible for initiating a traffic stop.

J. Rus stated that the CPRB had made the same policy recommendation which the OPD ultimately adopted as part of their revised PDRD policy.

## **XII. Schedule for Orientation and Training Sessions**

(Jose Dorado, Ginale Harris and Mike Nisperos)

### a. Discussion

Discussion on Measure LL required training on community policing, the creation of a timeline of training and holding a training retreat for the Commission.

M. Benson regarding a timeline of trainings and task items suggested the issuance of an RFP for training and to confer with the community on what training the community felt the Commission needed.

T. Smith regarding plans for a Saturday retreat in order to conduct the Measure LL trainings during the same day.

S. Hom regarding Measure LL required trainings, OPD trainers for certain topics, and scheduling a date for the training.

A. Finnell regarding trainings for agency staff.

### b. Public Comment

Public comments were provided by the following:

Cathy Leonard regarding orientation and training sessions for the Commission.

G. Harris informed the public that training for the Commission has already begun.

A. Dooley agreed to create a document that tracks trainings completed by Commission members.

## **XIII. Outreach Plan and Scheduling Sites for Community Meetings**

(Ginale Harris and Regina Jackson)

### a. Discussion

Discussion held by G. Harris regarding the outreach efforts she has initiated on her own as well as having an outreach plan for the Commission.

A. Dooley suggested a strategic plan, an ad hoc committee and use of community organizations for outreach efforts.

J. Dorado said the idea of an ad hoc committee is an excellent one, the Commission to formalize a plan, and act on it. M. Nisperos agreed.

A. Dooley questioned why there was not a formal action by the Commission.

T. Smith expressed agreement with the ad hoc committee and explained that an ad hoc committee does not require a formal action of the Commission.

b. Public Comment

No public comments.

**XIV. Adjournment**

The meeting was adjourned at 9:21 p.m.

# ITEM 8 (a)

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBERS KALB AND GALLO

\_\_\_\_\_  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**ADOPT AN ORDINANCE (1) ENABLING IMPLEMENTATION OF THE CITY CHARTER AMENDMENT CREATING THE OAKLAND POLICE COMMISSION AND THE COMMUNITY POLICE REVIEW AGENCY, (2) ESTABLISHING A CIVILIAN INSPECTOR GENERAL, AND (3) REQUIRING AN ANNUAL REPORT AND PRESENTATION BY THE COMMUNITY POLICING ADVISORY BOARD TO THE COMMISSION**

**WHEREAS**, On April 15, 1980, the City Council established the Citizens' Police Review Board (hereinafter, Board) with jurisdiction to review certain complaints alleging Oakland Police Department (hereinafter, Department) officer and park ranger misconduct, to conduct fact-finding investigations, and to make advisory reports to the City Administrator. On July 30, 1996, the City Council expanded the Board's jurisdiction to include complaints involving the excessive use of force, and bias based on an individual's legally protected status (race, gender, national origin, religion, sexual orientation or disability). In 2002, the City Council further expanded the Board's jurisdiction to include all complaints filed against police officers and park rangers, and expanded the Board's size from nine (9) members to twelve (12) members. The City Council also granted the Board the option of holding evidentiary hearings using three-member panels and permitted Board members to review confidential Oakland Police Department (hereinafter, Department) records in closed session. On November 12, 2002, the City Council passed Ordinance No. 12454 C.M.S., which further refined the Board's powers to include making recommendations to the City Administrator regarding litigated cases, and enlarged the amount of time for the Board to complete its investigations. However, the Board was not empowered to oversee Department policy or impose discipline; and

**WHEREAS**, In January 2003, the City entered into a Negotiated Settlement Agreement (hereinafter, NSA) with multiple plaintiffs who sued the City, alleging that Police Department officers violated plaintiffs' civil rights. Since implementation of the NSA, a federal monitoring team has audited – and continues to audit – the

Department's progress in complying with each of the fifty-two (52) tasks identified in the NSA; and

**WHEREAS**, While some important progress has been made in recent years, public perception persists that the Department and the City do not adequately hold its officers accountable for misconduct, leading to an erosion of public trust in this process; and

**WHEREAS**, Maintaining public trust and confidence in the Police Department is essential for the Department to be able to provide the highest level of service to the community. In order to increase the public trust and confidence in the Department, improvements should be made to the processes for providing Department oversight and accountability. Appointing qualified members of the public to a Police Commission (hereinafter, Commission), entrusting the Commission with oversight of the Department and requiring the Commission to hold public hearings all would increase public transparency, which in turn would build a higher level of trust and confidence in the services provided by the Department; and

**WHEREAS**, Major cities across the country, including New York City, Los Angeles, and San Francisco, as well as medium-size cities such as Albuquerque and Honolulu have civilian police bodies with varying degrees of oversight authority over their police departments. In recent years, more and more municipal jurisdictions have involved citizens in their law enforcement review systems, and highly publicized incidents of alleged or actual police misconduct and the years-in-the-making widespread public outrage over police misconduct, especially communities of color, has brought the issue of civilian oversight to center stage in the United States; and

**WHEREAS**, The National Association for Civilian Oversight of Law Enforcement, a nonprofit organization dedicated to promoting greater police accountability through the establishment or improvement of citizen oversight agencies, provides various resources on its website, including recommended standards and practices, which include the Police Oversight Principles of European Partners Against Corruption, which provides numerous recommendations for police oversight bodies including that they: (1) have independence from the executive branch of government; (2) are sufficiently separate from the hierarchy of the police subject to their oversight; (3) are governed by persons who are not currently serving as police officers; (4) have adequate finances and resources to perform their functions; (5) have full investigative powers regarding police misconduct allegations; and (6) are representative of a diverse population; and

**WHEREAS**, On November 8, 2016, the City of Oakland's voters passed Measure LL to add Section 604 to the Oakland City Charter, setting up the establishment of the Police Commission and the Community Police Review Agency and disbanding the Citizens' Police Review Board; and

**WHEREAS**, An enabling ordinance is a vital component of implementation of Measure LL, passed by the voters, because it provides more detailed information

about the functions and duties of the Commission and Agency, and also because an enabling ordinance provides direction to the Commissioners and Agency staff regarding the operation of their respective entities; and

**WHEREAS**, While the Department currently has an in-house sworn Inspector General, one of the best models for on-going oversight of police discipline can be found in the City of Los Angeles' Office of Inspector General. The L.A. Inspector General is a civilian who is charged with conducting systemic reviews of the disciplinary process and reports directly to the City of Los Angeles' Police Commission to ensure a necessary level of independence. The creation of a civilian Inspector General reporting to the Commission came from the Christopher Warren Commission reforms following the protests and riots stemming in part from the Rodney King jury verdict; and

**WHEREAS**, The July 2016 Report of Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement, established in 2015 as an advisory body to the San Francisco District Attorney's office, recommended the establishment of an independent Office of the Inspector General for San Francisco's Police Department; and

**WHEREAS**, The establishment of the Commission creates an additional potential forum for the input of the Community Policing Advisory Board to be received;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** That the City Council hereby adopts the addition of Chapters 2.45 and 2.46 to the Oakland Municipal Code to enable the implementation of City Charter section 604 which establishes the Oakland Police Commission and the Community Police Review Agency, and to establish the Office of Inspector General and to appoint a civilian Inspector General who shall be responsible for its day-to-day operations.

**SECTION 2.** Title 2 of the Oakland Municipal Code is amended to add Chapter 2.45, *Oakland Police Commission*, which shall read as follows:

## **Chapter 2.45 - OAKLAND POLICE COMMISSION**

### **2.45.010 – Definitions.**

The following words and phrases whenever used in this chapter shall be construed as defined in this section:

“Ad hoc committee” shall mean a temporary committee formed by the Commission comprised of less than a quorum of Commission members to address a specific issue.

“Agency” shall mean the Community Police Review Agency.

“Appointing Authority” shall mean the Selection Panel established by section 604(c)(3) of the City Charter or the Mayor. “Appointing Authorities” shall mean both the Selection Panel and the Mayor.

“Chief” shall mean the Chief of Police of the Oakland Police Department.

“Commission” shall mean the Oakland Police Commission.

“Department” shall mean the Oakland Police Department.

“Misconduct” shall mean both a Department sworn employee’s affirmative act that violates, and/or his or her failure to act in violation of, the Department’s policies, procedures or directives, including without limitation the Department’s Manual of Rules.

“OIG” shall mean the civilian Office of Inspector General created by this Chapter 2.45.

“Serious Incident” shall mean a Department sworn employee-involved shooting, death or serious bodily harm caused by the action and/or inaction of a Department sworn employee, in-custody death, and/or on-duty or off-duty criminal conduct of a sworn Department employee which rises to the level of a felony or Serious Misdemeanor.

“Serious Misdemeanor” shall mean any misdemeanor crime that, if convicted, could preclude active law enforcement personnel, or a sworn employee of the Department, from successfully fulfilling the responsibilities of their job classification. Examples include those crimes that involve violence, intimidation, threats, sexual offenses, theft, dishonesty, possession of drugs, purchase, ownership or possession of a firearm in violation of California Penal Code section 12021(c)(1), and those crimes where bias based on any legally protected characteristic is a motivating factor.

“Subject Officer” shall mean the Department sworn employee who is the subject of a complaint of alleged Misconduct.

**2.45.020 – Creation of Police Commission & Repeal of Citizens’ Police Review Board.**

Oakland City Charter section 604 has established the Oakland Police Commission. Effective the sixtieth day after the City Council’s confirmation of the first group of Commissioners and alternates, Ordinance No. 12454 C.M.S., which created the Citizens’ Police Review Board, shall be repealed.

**2.45.025 – Conflict of Interest.**

The following persons shall not be eligible to serve as a Commissioner or as a member of the Selection Panel:

- A. Any attorney who represents a person or entity with a pending claim or lawsuit against the Department; or

- B. Any attorney who represented a person or entity that filed a claim or lawsuit against the Department and that claim or lawsuit was finally resolved during the previous year.

This section shall not apply to the Selection Panel members already appointed on the effective date of this Chapter 2.45.

**2.45.030 – Selection Panel.**

- A. To the extent practicable and with the exception of the first Selection Panel previously formed under City Charter section 604(c)(3), the Mayor and the City Council shall use best efforts to appoint individuals to the Selection Panel who are broadly representative of Oakland’s diversity and who represent communities experiencing the most frequent contact with the Department.
- B. With the exception of the first Selection Panel previously formed under City Charter section 604(c)(3), Selection Panel members shall be residents of Oakland.
- C. The City Administrator shall post on the City's website the names of all Selection Panel members within four (4) business days of their appointment(s) being received by the City Clerk.
- D. The Selection Panel, with the assistance of the City Administrator, shall determine how to solicit candidates for the positions of Commissioner and alternate, and shall determine, consistent with City Charter section 604, what information candidates must submit as part of their applications.
- E. In accord with the City’s record retention schedule, the Selection Panel shall maintain all electronic communications to, from and/or copied to any Selection Panel member regarding any matters within the Selection Panel’s jurisdiction, and provide such communications to the City upon request.

**2.45.040 - Bylaws and Rules.**

The Commission may prepare its own Bylaws to govern its operations. Any such Bylaws shall be approved by a vote of not less than five (5) affirmative votes. To the extent required by law, the City will provide the employee unions with notice of such proposed bylaws prior to implementation.

**2.45.045 – Confidentiality of Personnel Information.**

The Commission, the Agency, the OIG and their staff shall maintain the confidentiality of Department sworn employee personnel records (as defined by California Penal Code section 832.7) as required by state and local law. Failure to maintain the confidentiality of Department sworn employee personnel records, whether or not intentional, may subject Commission, Agency and OIG staff to discipline, up to and including termination of employment.

**2.45.050 – Designation of Alternates as Voting Members**

The Chair of the Commission may, in his or her discretion, designate an alternate as a temporary voting member if a Commissioner is absent from a meeting. Consistent with section 604 of the City Charter, there shall not be more than seven (7) voting members of the Commission at any given time.

**2.45.060 - Background Checks.**

In accordance with federal and state law, a background check shall be performed on the Mayor's and the Selection Panel's final candidates for the position of Commissioner and alternate before their names are submitted to the City Council for confirmation. The City Administrator's Office shall retain an independent contractor to perform these background checks, which shall include:

- A. Verification of educational and employment background, and any other information that may be verified by a public records search.

The results of the background check identified in subsection (A) above shall be treated as public records, and shall be considered by the appropriate Appointing Authority prior to submitting the names of the final candidates to the City Council for confirmation.

**2.45.070 – Functions and Duties of the Commission.**

In addition to the powers and duties described in section 604 of the Oakland City Charter, the Commission shall:

- A. In accord with the City's record retention schedule, maintain all electronic communications to, from and/or copied to any Commissioner or alternate regarding any matters within the Commission's jurisdiction, and provide such communications to the City upon request.
- B. Maintain the confidentiality of its business in accordance with state and local law, including without limitation, California Penal Code 832.7 and the California Public Records Act (Cal. Gov't Code sec. 6250, *et seq.*). A Commissioner's failure to maintain such confidentiality, whether or not intentional, may be considered "gross misconduct in office" for purposes of City Charter section 604(c)(10).
- C. Review and comment on the education and training the Department provides its sworn employees regarding the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues. The Commission shall provide any recommendations for more or different education and training to the Chief who shall respond in writing.
- D. Prepare and deliver to the Mayor, the City Administrator and the Chief by April 30 of each year, or such other date as set by the Mayor, a proposed budget for providing the education and training identified in subsection (C) above.
- E. Notwithstanding section 2.29.020 of the Oakland Municipal Code and in accordance with section 604(b)(10) of the City Charter, have the authority to

remove the Chief, without the approval of the Mayor, by a vote of not less than five (5) affirmative votes and only after finding cause. For purposes of removing the Chief, "cause" shall be defined as any of the following:

1. Continuing, intentional, or willful failure or refusal to perform the duties and responsibilities of the Chief of Police as required by any employment agreement with the City, the City Charter, the City's governing laws and regulations, or any laws, rules or regulations of any governmental entity applicable to the Chief's employment by the City or to City operations, including without limitation, the inability to perform the duties and responsibilities of the Chief of Police as aforementioned as a result of alcoholism or drug addiction; or
  2. Gross neglect of duties, material violation of any duty of loyalty to the City, or material violation of City or Department policy, including without limitation any policies or procedures pertaining to harassment and discrimination, after the Chief has received written warning of the neglect or violation and the Chief has failed to cure the neglect or violation within twenty (20) days; or
  3. Conviction by, or entry of a plea of guilty or *nolo contendere*, in a court of competent and final jurisdiction for (a) any crime involving moral turpitude, (b) any felony offense, (c) any crime which is likely to have a material adverse impact on the business operations or financial or other condition of the City, or (d) any crime which has resulted in imprisonment; or
  4. Failure or refusal to cooperate with any investigation involving employees of the Department; or
  5. Obstruction of any investigation of Department employee misconduct or criminal activity; or
  6. Refusal, which shall include ongoing failure, to administer or enforce any Department policy or procedure; or
  7. A material act of dishonesty, fraud, embezzlement, self-dealing, or other act of moral turpitude; or
  8. A material breach of confidentiality; or
  9. Loss of any professional license or other certification required by state or local law to perform the duties of the position of Chief of Police.
- F. Within two hundred and forty (240) days of the City Council's confirmation of the first group of Commissioners and alternates and on the anniversary of that date thereafter, notify the Chief regarding what information will be required in the Chief's annual report to the Commission which shall include, at a minimum, the following:
1. The number of complaints submitted to the Department's Internal Affairs Division (hereinafter, "IAD") together with a brief description of the nature of the complaints;
  2. The number of pending investigations in IAD, and the types of Misconduct that are being investigated;
  3. The number of investigations completed by IAD, and the results of the investigations;

4. The number of training sessions provided to Department sworn employees, and the subject matter of the training sessions;
5. Revisions made to Department policies;
6. The number and location of Department sworn employee-involved shootings;
7. The number of Executive Force Review Board or Force Review Board hearings, and the results;
8. A summary of the Department's monthly Use of Force Reports;
9. Number of Department sworn employees disciplined and the level of discipline imposed; and
10. The number of closed investigations which did not result in discipline of the Subject Officer.

The Chief's annual report shall not disclose any information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

- G. Conduct an annual performance review of the Inspector General. The Commission shall determine the criteria for evaluating the Inspector General's and the Agency Director's job performance, and communicate those performance criteria, in addition to any other job performance expectations, to both the Inspector General and the Agency Director one full year before conducting any evaluation of their job performances. The Commission may, in its discretion decide to solicit and consider, as part of its evaluation, comments and observations from the City Administrator and other City staff who are familiar with the Inspector General's and the Agency Director's job performance. Responses to the Commission's requests for comments and observations shall be strictly voluntary.
- H. Request that the City Attorney submit semi-annual reports to the Commission and to City Council which shall include a listing and summary of:
1. To the extent permitted by applicable law, the discipline decisions that were appealed to arbitration;
  2. Arbitration decisions or other related results;
  3. The ways in which it has supported the police discipline process; and
  4. Significant recent developments in police discipline.
- The City Attorney's semi-annual reports shall not disclose any information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.
- I. Provide policy guidelines to the Agency Director for assistance in determining case prioritization.
- J. Make available on its website, to the extent permitted by law:
1. The Commission's annual report;
  2. The Chief's annual report;
  3. The Agency's reports;
  4. The Agency Director's monthly reports; and
  5. The Inspector General's annual report.

No information shall be distributed using any print media, or posted using any electronic media, in violation of state and local law regarding the confidentiality

of personnel records, including but not limited to California Penal Code section 832.7.

- K. Direct the Agency to investigate a Serious Incident when requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote.
- L. Review the Agency's dismissal and/or administrative closure of all complaints of Misconduct involving Class I offenses, including any Agency investigative file regarding such complaints, and, in its discretion and by five (5) affirmative votes, direct the Agency to reopen the case and investigate the complaint. For purposes of this subsection, the definition of "Class I offenses" shall be the same as the definition of "Class I offenses" in the Department's Discipline Policy.
- M. In order for the Commission to have all information necessary to fulfill its duties under City Charter section 604(f)(1), direct the Chief to:
  - 1. Within forty-eight (48) hours of knowing or having a Reasonable Suspicion that a Serious Incident has occurred, notify the Chair of the Commission, the Agency Director and the Inspector General. For purposes of this subsection, "Reasonable Suspicion" shall mean that, from the totality of the circumstances, there is a specific, articulable, and objective basis for suspecting personnel of criminal activity. There must be specific facts beyond the mere allegation of criminal misconduct. The Commission shall also direct the Chief to provide a confidential status report to the Chair of the Commission, the Agency Director and the Inspector General within ten (10) calendar days of the date on which the Serious Incident occurred, and a second confidential status report to the Chair of the Commission, the Agency Director and the Inspector General within forty-five (45) calendar days of the date on which the Serious Incident occurred.
  - 2. Brief the Commission Chair, the Agency Director and the Inspector General at least once a month regarding allegations of all Serious Incidents under investigation.
- N. In association with the Agency Director and in consultation with the Chief or the Chief's designee, establish rules and procedures for the mediation and resolution of complaints of Misconduct. To the extent required by law, the City will provide the employee unions with notice of such proposed bylaws prior to implementation.
- O. Receive any and all reports prepared by the Community Policing Advisory Board (hereinafter referred to as "CPAB") and consider acting upon any of the CPAB's recommendations for promoting community policing efforts and developing solutions for promoting and sustaining a relationship of trust and cooperation between the Department and the community.
- P. Review and comment on the Department's policy and/or practice of publishing Department data sets and reports regarding various Department activities, submit its comments to the Chief, and request the Chief to consider its recommendations and respond to the comments in writing.
- Q. Solicit and consider input from members of the public regarding the quality of their interactions with the Agency and the Commission.

### **2.45.080 – Access to Documents.**

- A. Subject to applicable law, the Commission shall have access to all Agency and Department files and records, with the exception of personnel records, and to all files and records of other City offices, departments or agencies that are relevant and necessary to the performance of its duties, with the exception of personnel records.
- B. Subject to applicable law, the Commission shall have access to all Department files and records, with the exception of personnel records, and to all files and records of other City departments and agencies that are relevant to a Serious Incident. Notwithstanding the foregoing, the Commission shall have access to the personnel records necessary to perform its duties described in City Charter section 604(g)(3) and in section 2.45.070(K) of this Chapter of the Oakland Municipal Code.
- C. The Discipline Committees shall have access to all files, including personnel records, that are included in the Chief's and Agency's submissions, as described in City Charter section 604(g)(2) and in this Chapter 2.45.
- D. The Inspector General shall have access to all files, including personnel records, that are necessary to perform his or her duties as described in this Chapter 2.45.
- E. The Commission and the OIG shall follow Department policies and procedures regarding the release of videotape and audio tape recordings of alleged Class 1 violations committed by police officers.
- F. To the extent possible, any confidential documents, files and records shall be made available to the Commissioners, the Inspector General and the Discipline Committees in electronic format on a secure server. Each individual who has access to this server shall have his or her own password. Each page of any printed copies of confidential documents, records or files shall bear a watermark consisting of the name of the individual for whom the printed copies are made. All such copies must be stored in a secure place, and must be shredded when no longer needed. Upon expiration of his or her term, a Commissioner must return to the City any and all copies of confidential materials that have not been shredded.

### **2.45.090– Meetings**

In conducting its meetings, the Commission shall comply with all requirements of the Brown Act, California Government Code section 54950, *et seq.*, and Article II of Chapter 2.20 of the Oakland Municipal Code.

- A. Consistent with City Charter section 604(d)(1), the Commission shall meet at least twice each month at an established time and place suitable to its purpose. Such meetings shall be designated regular meetings, and shall be held at City Hall. If the Commission determines, by a majority vote of those present at a regular meeting, that a second regular meeting in that month is not necessary, it shall provide public notice of the meeting cancellation as required by all

applicable State and local laws. Video recordings of all open sessions of Commission meetings shall be aired on KTOP-TV10.

- B. Consistent with City Charter section 604(d)(1), at least twice each year, the Commission shall hold one of its regularly scheduled meetings at a location outside of City Hall. These offsite meetings shall be designated special meetings subject to the ten-day agenda notice requirement for purposes of Article II of Chapter 2.20 of the Oakland Municipal Code, and shall include an agenda item titled "Community Roundtable," or something similar. The purpose of the Community Roundtable agenda item shall be to solicit community testimony and other input in discussions regarding community policing, building trust between the community and the Department, and other similar and relevant subjects as determined by the Commission. The Commission shall consider inviting to each Roundtable individuals and groups familiar with the issues involved in building and maintaining trust between the Department and the community, including but not limited to representatives from the Department, members of faith-based groups, youth groups, advocacy groups, residents of neighborhoods that experience the most frequent contact with the Department and, to the extent practicable, formerly incarcerated members of the community.
- C. "Final actions," as defined by state and local open meeting laws, taken by the Commission in closed session shall be publicly reported with the vote or abstention on that action of every member present.

#### **2.45.100 - Office of Inspector General.**

Within one hundred and eighty (180) days after the City Council's confirmation of the first group of Commissioners and alternates, there shall be established, under the purview of the Commission, a civilian Office of Inspector General for the Department (hereinafter referred to as "OIG"). Within one (1) year after the City Council's confirmation of the first group of Commissioners and alternates, the Department's internal Office of Inspector General shall be renamed. The Commission shall be responsible for oversight of the OIG.

- A. The powers, functions and duties of the OIG shall be those assigned, authorized and directed by the Commission, and shall include conducting any audit or review of the Department necessary to assess the Department's performance and adherence to constitutional policing practices, and shall also include conducting any audit or review of the Department's policies and procedures, including any pattern of non-compliance with the foregoing, as necessary or helpful for the Commission to fulfill its duties under City Charter section 604(b)(4), (5) and (6).
- B. The Chief shall assign a sworn Department employee to act as a liaison from the Department to the OIG.
- C. The City shall allocate a sufficient budget for the OIG to perform its functions and duties as set forth in section 2.45.120 below, including budgeting one (1) full-time staff position comparable to the position of Police Program and Audit Supervisor. All OIG staff, including the Inspector General, shall be civil service employees in accordance with Article IX of the City Charter. All OIG staff shall report to the

Inspector General. Except for the Inspector General, the Commission shall not have any authority to hire, supervise, evaluate or fire OIG staff.

- D. Within thirty (30) days after the first Inspector General is hired, the Policy Analyst then assigned to the Agency shall be transferred to the OIG.

**2.45.110 – Civilian Inspector General.**

- A. Within one (1) year of the City Council’s confirmation of the first group of Commissioners and alternates, the Commission, with the assistance of the Human Resources Management Department and in accordance with the City’s Civil Service Rules, shall prepare a job description and list of required qualifications for the position of civilian Inspector General. After all required approvals have been obtained for adding this position to the City’s Classification Plan (as defined by the City’s Civil Service Rules), the Commission, with the assistance of the City Administrator, shall be responsible for hiring the first and all subsequent civilian Inspectors General. The Inspector General shall be subject to a background check as described in section 2.45.060 above before hiring except that the results of the background check shall be submitted only to the Commission.
- B. Within ninety (90) days of his or her appointment, the Inspector General shall, at a minimum, receive the training described in City Charter section 604(c)(9) and in section 2.45.190(A) through (F) of this Chapter 2.45. The Commission may require any additional training it deems necessary for the Inspector General to perform the functions and duties of the OIG.
- C. The Inspector General shall report to the Commission, and may only be removed according to the City’s Civil Service Rules and any applicable memorandum of understanding between the City and a union, after an affirmative vote of five (5) members of the Commission. The City Administrator shall not have the authority to independently remove the Inspector General.
- D. The Inspector General shall be responsible for the day-to-day operations of the OIG, including but not limited to the supervision and direction of all OIG staff.
- E. The Inspector General shall be permitted to attend, as an observer, Executive Force Review Board, Force Review Board, and, to the extent permitted by law, *Skelly* hearings if he or she chooses to do so. The Inspector General shall not have any decision-making authority regarding the specific cases being heard, and shall maintain the confidentiality of the hearings as required by law. The Inspector General shall not be permitted to attend any Executive Force Review Board, Force Review Board, or *Skelly* hearing until he or she has completed the training identified in section 2.45.190(C).

**2.45.120 – Functions and Duties of the Office of Inspector General.**

The Commission shall have the authority to prioritize the functions and duties of the Office of Inspector General, which shall include, without limitation:

- A. Preparing an annual report, summarizing the results of the annual reviews of:

1. The Department's processes and procedures for investigating alleged Misconduct;
2. The Department's processes and procedures for determining the appropriate level of discipline for sustained findings of Misconduct;
3. The Agency's processes and procedures for investigating alleged Misconduct;
4. The Agency's processes and procedures for determining the appropriate level of discipline for sustained findings of Misconduct;
5. Trends and patterns regarding Department training and education, and the Department's use of any early warning system(s);
6. Training and/or policy issues that arise during the investigations of complaints; and
7. Trends and patterns regarding use of force and Department sworn employee-involved shootings.

This annual report shall be presented to the Commission, the Mayor, the City Council's Public Safety Committee, the City Council and to the Chief and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.

- B. Monitoring and evaluating, on at least an annual basis, the number and percentage of sworn officers who have received in-service training on profiling and implicit bias, procedural justice, de-escalation, diplomacy, situational problem-solving, and work-related stress management, and make recommendations, as appropriate, to the Commission regarding changes to the Department's training programs.
- C. Developing and presenting a plan to the Commission to measure the performance of each element of the Department's discipline process for sworn Department employees.
- D. Completing all audits or reviews requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote. The Inspector General shall report all findings to the office that requested the audit or review.
- E. Monitoring, evaluating, and making recommendations regarding the Department's recruitment and hiring practices for sworn personnel.
- F. Monitoring, evaluating, and making recommendations regarding the Department's policies and procedures as requested by the Commission in furtherance of its duties under City Charter section 604(b)(4), (5) and (6).
- G. Monitoring, evaluating, and making recommendations regarding the Department's risk management practices.
- H. Any reports, plans, audits, reviews and recommendations generated by the OIG shall not disclose information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

**2.45.130– Establishment of the Discipline Committee.**

A separate Discipline Committee will be established for each Department sworn employee discipline or termination case. The Chairperson of the Commission shall appoint three (3) Commission members to serve on a Discipline Committee, and shall designate one of these

three (3) Commission members as the Chairperson. The Discipline Committees shall decide any dispute between the Agency and the Chief regarding the proposed or final findings or proposed or final level of discipline to be imposed on a Subject Officer.

- A. No Discipline Committee established by the Commission shall decide any dispute between the Chief and the Agency, as directed by section 604(g) of the City Charter, until each member of the Discipline Committee has completed: (1) orientation regarding Department operations, policies and procedures, including but not limited to discipline procedures for Misconduct, and (2) the training described in section 2.45.190(A) through (F).
- B. Membership in the Discipline Committees shall rotate for each Department sworn employee discipline or termination case, as determined by the Chairperson of the Commission.

#### **2.45.140 – Discipline.**

In accordance with section 604(g)(4) of the City Charter, all Department sworn employees shall be afforded their due process and statutory rights, including *Skelly* rights, as follows:

- A. With respect to Misconduct that is given a Class I designation pursuant to the Department's Discipline Policy, the Chief and the Agency Director shall include probative videotape and/or audiotape from their respective investigations in their submissions to the Discipline Committee pursuant to City Charter section 604(g)(2). The Discipline Committee shall have the authority to require the Chief and the Agency Director to provide any additional videotape, audiotape, and/or documents (including without limitation any existing transcripts of Subject Officer or witness interviews) from the Agency's and the Department's investigation files that it deems relevant to its deliberations, and shall also have the authority to require the Chief and the Agency Director, or their non-attorney designees, to appear before the Discipline Committee to present their findings and recommendations and to answer questions.
- B. The record submitted to the Discipline Committee by the Chief regarding any Misconduct shall include the Subject Officer's history of discipline for the previous five (5) years. All documents submitted to the Discipline Committee by either the Agency Director or the Chief shall not include any redactions unless such redactions are required by law.
- C. After the investigation of a complaint has been completed and a decision has been made regarding the proposed findings and the proposed level of discipline (hereinafter referred to as the "Proposed Discipline"), either by agreement between the Chief and the Agency or by decision of the Discipline Committee, the Chief shall send a Notice of Intent to Impose Discipline or a Notice of Intent to Terminate to the Subject Officer. Consistent with City policy and applicable law, the Department shall offer the Subject Officer a *Skelly* hearing to be conducted by an assigned *Skelly* officer. After completion of the *Skelly* hearing, the *Skelly* officer shall issue his or her report which shall include his or her

recommendation regarding whether the Proposed Discipline should be affirmed or modified in any way.

- D. The *Skelly* report shall be submitted to the Chief and to the Agency Director if the Chief and the Agency Director agreed on the Proposed Discipline. The Chief and the Agency Director shall consider the *Skelly* report and consult with each other regarding the final set of findings and level of discipline to be imposed (hereinafter referred to as "Final Discipline").
1. If the Chief and the Agency Director agree on the Final Discipline, the Chief shall send a Notice of Discipline or Notice of Termination to the Subject Officer.
  2. If the Chief and the Agency Director do not agree on the Final Discipline, the *Skelly* report shall be submitted to the Discipline Committee which shall decide the Final Discipline based solely on the record reviewed and considered by the Skelly Officer (which shall include the Notice of Intent to Discipline or Terminate with all attachments). The Discipline Committee shall also have the authority to require the Chief and the Agency Director, or their non-attorney designees, to appear before the Discipline Committee to present their recommendations and to answer questions. After determining the Final Discipline, the Discipline Committee shall direct the Chief to send a Notice of Discipline or Notice of Termination to the Subject Officer.
- E. The *Skelly* report shall be submitted to the Discipline Committee if the Discipline Committee decided the Proposed Discipline. The *Skelly* report shall also be submitted to the Chief and the Agency Director. The Discipline Committee shall consider the *Skelly* report in deciding the Final Discipline. After such determination, the Discipline Committee shall direct the Chief to send a Notice of Discipline or Notice of Termination to the Subject Officer.
- F. After the Final Discipline has been determined by either the agreement of the Agency Director and the Chief, or by the Discipline Committee, and to the greatest extent permitted by law, the complainant(s) shall be informed of the disposition of the complaint.
- G. The Discipline Committee shall maintain the confidentiality of all personnel and/or privileged information as required by State and local law. After the Discipline Committee has concluded its deliberations regarding the Proposed Discipline and/or the Final Discipline, it shall return all records and information it received (if not received electronically) to the party from which it received such records and information. Members of the Discipline Committee shall not retain copies of the records they receive from the Chief and the Agency, nor shall they publicly comment about, or discuss any personnel matter with anyone, including another member of the Discipline Committee, outside of Discipline Committee meetings, except as required by a valid subpoena. This subsection (G) shall not preclude any member of a Discipline Committee from participating in any grievance procedure, including without limitation testifying in an appeal before the Civil Service Board or an arbitration or other type of administrative hearing.

- H. The Subject Officer may appeal the imposition of discipline or termination to the Civil Service Board. In addition, the Subject Officer may grieve the imposition of discipline or termination as prescribed in a collective bargaining agreement.

#### **2.45.150– Establishment of Other Committees**

The Commission must obtain City Council approval prior to the creation of any other standing committee. A proposal to create a standing committee of the Commission must include information regarding the costs associated with staffing the standing committee, if any, and the costs of complying with noticing and reporting requirements resulting from its establishment. City Council approval shall not be required for creating temporary or *ad hoc* committees.

#### **2.45.160 - Public Statements of the Commission**

The Commission may authorize one of its members to issue statements to the public regarding the Commission's official business, to the extent such business is not confidential or privileged under State or local law, only after the statement has been approved by an affirmative vote of not less than four (4) votes in a public meeting. Commissioners may publicly discuss their roles as Commissioners and the Commission's public and official business for the purpose of educating the community provided they adhere to the notice requirements of the Brown Act and Oakland's Sunshine Ordinance.

#### **2.45.170 - Election of Chairperson.**

At its first regular meeting, the members shall elect a chairperson and a vice-chairperson. Beginning February 1, 2019, the members shall elect a chairperson and a vice-chairperson at the first regular meeting of each year.

#### **2.45.180 - Staff assistance.**

- A. Within two hundred and forty (240) days of the City Council's confirmation of the first group of Commissioners and alternates and on an ongoing basis as appropriate, the Commission shall provide the City Administrator with its proposal for the staff positions necessary to permit the Commission and the Agency to fulfill its functions and duties as set forth in this Chapter 2.45, Chapter 2.46, and as set forth in section 604 of the City Charter.
- B. Pursuant to City Charter section 604(e)(5) and, to the extent practicable, within one (1) week of the City Council's confirmation of the first group of Commissioners and alternates, the City Administrator shall assign an administrative staff person to provide administrative support to the Commission and to act as liaison between the Commission and the City Administrator's office.
- C. At a minimum, the City Council shall allocate the equivalent of an additional one-half of a full-time administrative position (0.5 FTE) to the City budget for the purpose of providing adequate administrative support for the Commission. The administrative staff person described in this subsection (C) shall be hired, to the extent practicable, within sixty (60) days of the effective date of this Chapter 2.45,

and shall report to the Commission. In addition, this administrative staff person may only be removed according to the City's Civil Service Rules and any applicable memorandum of understanding between the City and a union, after an affirmative vote of five (5) members of the Commission. Upon a vacancy, the Commission shall have the authority to fill this position. The City's Department of Human Resources Management shall provide timely assistance to the Commission for this purpose.

#### **2.45.190 – Commissioner Training.**

Within six (6) months of appointment, or as soon thereafter as possible and with the exception of the first group of Commissioners and alternates, each Commissioner and alternate shall:

- A. Become familiar with City Charter section 604 and with Chapters 2.45 and 2.46 of the Oakland Municipal Code.
- B. Receive training in basic principles of constitutional due process and administrative hearing procedures;
- C. Receive training in the legal requirements for maintaining the confidentiality of personnel records and other confidential documents or information;
- D. Receive briefing on the Negotiated Settlement Agreement in the case of *Delphine Allen, et al. v. City of Oakland*, and all related court orders for so long as they remain in effect;
- E. Receive information regarding constitutional civil rights guaranteed to all citizens as such rights are affected by law enforcement;
- F. Receive training in the legal requirements of California's Political Reform Act (Cal. Gov't Code section 81000, *et seq.*), Oakland's Conflict of Interest Code (Oakland Municipal Code Chapter 3.16), California's Brown Act (Cal. Gov't Code section 54950, *et seq.*), Oakland's Sunshine Ordinance (Oakland Municipal Code Chapter 2.20), and California's Public Records Act (Cal. Gov't Code section 6250, *et seq.*);
- G. Receive training in open session in the legal requirements of California's Meyers Miliias Brown Act (Cal. Gov't Code section 3500, *et seq.*) (MMBA), the Public Employment Relations Board's administration of the MMBA, the City's Memoranda of Understanding with the Oakland Police Officers' Association and other represented City employees, the City's Civil Service Board, and other relevant City personnel policies and procedures; and
- H. Receive training in open session in the legal requirements of California's Public Safety Officers Procedural Bill of Rights Act (Cal. Gov't Code section 3300, *et seq.*), and other California Code sections pertaining to peace officers' rights

The first group of Commissioners and alternates shall comply with the requirements of subsections (A) through (H) within twelve (12) months of their appointment.

In addition, within twelve (12) months of appointment, or as soon thereafter as possible and with the exception of the first group of Commissioners and alternates, each Commissioner and alternate shall:

- I. Receive the training and orientation specified by section 604(c)(9) of the City Charter;
- J. Participate in a Department “ride-along” and attend a police academy curriculum designed for them by the Chief after consultation with the Commission. The curriculum shall be designed so that criminal background checks will not be required for attendance;
- K. Complete the Department’s Implicit Bias Training, and Crisis Intervention Training;
- L. Complete Peace Officer Standards and Training (POST) Learning Domains 15 (Laws of Arrest) and 16 (Search and Seizure); and
- M. Receive training regarding racial equity.

The first group of Commissioners and alternates shall comply with the requirements of subsections (I) through (M) within eighteen (18) months of their appointment.

The City Administrator shall assist the Commission in scheduling and facilitating all training and orientation required by this section and by section 604 of the City Charter. Within the Commission’s budget there shall be a line item for attendance at conferences offered by organizations such as the National Association for Civilian Oversight of Law Enforcement (“NACOLE”).

#### **2.45.200 - Hearings**

It shall be the sole and exclusive responsibility of the Commission to determine the order and conduct of any public hearing, consistent with applicable law.

#### **2.45.210 – Authority of Public Ethics Commission.**

If either the Commissioner or the Inspector General does not receive the files and records requested pursuant to section 604 of the City Charter or pursuant to this Chapter 2.45 within fifteen (15) business days of its request, the Public Ethics Commission shall have the authority to investigate allegations that the head of the offending City department or agency failed to provide the requested files or records as required by section 604 of the City Charter or this Chapter 2.45. Such requirements shall be subject to enforcement by the City in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

#### **2.45.220– Reporting to City Council.**

The Commission shall submit its first annual, written report to the Mayor, City Council and the public within eighteen (18) months of the City Council’s confirmation of the first group of Commissioners and alternates. The Commission’s subsequent reports shall be submitted annually on or near the anniversary of that date.

**SECTION 3.** Title 2 of the Oakland Municipal Code is amended to add Chapter 2.46, *Community Police Review Agency*, which shall read as follows:

**Chapter 2.46 - COMMUNITY POLICE REVIEW AGENCY**

**2.46.010 – Definitions.**

The following words and phrases whenever used in this chapter shall be construed as defined in this section:

“Agency” shall mean the Community Police Review Agency.

“Commission” shall mean the Oakland Police Commission.

“Department” shall mean the Oakland Police Department.

“Misconduct” shall mean both a Department sworn employee’s affirmative act that violates, and/or his or her failure to act in violation of, the Department’s policies, procedures or directives, including without limitation the Department’s Manual of Rules.

“Subject Officer” shall mean the Department sworn employee who is the subject of a complaint of alleged Misconduct.

**2.46.020– Creation**

Oakland City Charter section 604 has established the Community Police Review Agency. It is in the public interest to facilitate the Agency’s receipt of public complaints regarding alleged Misconduct. Thus, some of the Agency staff should be located in a street-level or ground-floor, visible office that is accessible by public transportation. The Commission, in consultation with the Agency Director, shall determine the number of existing Agency staff who would work at such a location. Hours of operation for this location shall be clearly posted on the office door and inside the office. The address of this office location, together with hours of operation and a telephone number shall be posted on the City’s website and on the Agency’s website.

**2.46.030 – Functions and duties.**

In addition to the powers and duties prescribed in section 604 of the Oakland City Charter, the Agency’s functions and duties are as follows:

- A. Use the same complaint form as used by the Department in receiving all public complaints concerning alleged Misconduct, including complaints from Department non-sworn employees. All complaints, wherever filed, shall be date-stamped and numbered sequentially. A copy of the numbered and date-stamped

- complaint shall be provided to the complainant and to the Department's Internal Affairs Division within one (1) business day of receipt.
- B. Make complaint forms available to the public by posting the forms and information about the complaint process on the Agency's website and by accepting the online filing of complaints and attachments via the Agency's website, and by making information about the complaint process available at other public locations to be determined by the Agency Director;
  - C. Ensure that all investigators receive any necessary training in conducting fair and impartial investigations.
  - D. Request the Commission to issue a subpoena, in accordance with City Charter section 604(b)(3), to compel a Subject Officer and any other sworn employee of the Department to fully cooperate with an Agency investigation. The Chief shall order all Department sworn employees subject to any subpoena issued by the Commission to comply with all requirements of the subpoena.
  - E. Videotape the interviews of all Subject Officers who are alleged to have committed a Class I offense. For purposes of this subsection, the definition of "Class I offense" shall be the same as the definition of "Class I offense" in the Department's Discipline Policy.
  - F. Request, without requiring, that the complainant(s) and witnesses of Class I allegations agree to be audiotaped or videotaped if, in the Agency's discretion, its investigation would benefit from such taping.
  - G. In consultation with and upon the approval of the Commission, establish rules and procedures for the operation of its business including, but not limited to, procedures for the intake of complaints.
  - H. No less than twice a year and as permitted by applicable law, issue a report to the Public Safety Committee which shall include the following information:
    - 1. The number of complaints submitted to the Agency together with a brief description of the nature of the complaints and the identification of the Council District from which the complaint originated;
    - 2. The demographic profiles of the complainants to the extent that information exists or is voluntarily provided by the complainants;
    - 3. The number of the Agency's pending investigations, and the types of Misconduct that is being investigated;
    - 4. The number of investigations completed by the Agency, the results of the investigations, and the amount of time spent on the investigations;
    - 5. The number of Department sworn employees for whom sustained findings of Misconduct were made and the level of discipline proposed;
    - 6. The number of closed investigations which did not result in sustained findings and/or discipline of the Subject Officer;
    - 7. The number of cases referred to mediation;
    - 8. The number of cases in which the Agency failed to meet (a) the one-hundred-and-eighty-day (180) goal specified by City Charter section 604(f)(3), and/or (b) the deadline specified by California Government Code section 3304; and
    - 9. The number of times a Department employee failed to comply with the Agency's request for an interview or for the production of documents, and

the number of times a Department sworn employee failed to comply with a valid subpoena, and whether discipline was imposed for any such non-compliance.

**2.46.040 – Agency Director.**

The Agency Director shall report to, and be supervised by, the Commission, and shall be responsible for the day-to-day operations of the Agency. The Agency Director's job responsibilities shall include, but not be limited to, the following:

- A. Identifying the staff positions, in addition to the position of Investigator, necessary to perform the Agency's functions and duties;
- B. Assigning complaints to investigators, consulting with investigators regarding, and monitoring the progress of, their investigations;
- C. Monitoring the workload of all Agency staff;
- D. Reporting to the Commission once a month regarding the Agency's pending cases. The following information shall be included in the Agency Director's monthly written report:
  - 1. The case number;
  - 2. The name of the complainant;
  - 3. The initials of the investigator assigned to investigate the complaint;
  - 4. The date the complaint was filed with the Agency and the date the complaint was filed with the Department's Internal Affairs Division;
  - 5. The date by which the investigation must be completed if the Agency is to meet the one-hundred-and-eighty-day (180) goal specified by City Charter section 604(f)(3);
  - 6. The deadline by which the investigation must be completed, as specified by California Government Code section 3304;
  - 7. The date of the incident that is the subject of the complaint; and
  - 8. If City Charter section 604(f)(1) requires the Agency to investigate the complaint, whether the complaint involves uses of force, in-custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, and First Amendment assemblies. If City Charter section 604(f)(1) does not require the Agency to investigate the complaint, a brief, general description of the type of complaint. This brief, general description must be similar in length and generality to the description of the types of complaints the Agency is required to investigate, as stated in City Charter section 604(f)(1); and
  - 9. The number of times the Department and/or a Department employee refused to comply with a written request for information, and the number of times a Department sworn employee refused to comply with a valid subpoena.
- E. Conducting annual job performance evaluations of all Agency staff;
- F. Responding to questions and issues raised by the public, as permitted by applicable law; and

- G. Any other duties assigned by the Commission, consistent with the Agency's powers and duties as described in section 604 of the City Charter and subject to any constraints imposed by the Agency's budget.

#### **2.46.050 – Background Checks.**

In accordance with federal and state law and consistent with section 604(e)(7) of the City Charter, background checks shall be performed on all new Agency Complaint Investigators and on the Agency Director, before hiring. The City Administrator's Office shall retain an outside person or entity to perform these background checks, which shall include:

- A. Verification of educational and employment background, and any other information that may be verified by a public records search; and
- B. Results of a criminal records search.

The results of the background checks may be used solely for the purpose of evaluating the candidates for the Agency Director and for Agency Complaint Investigator. The results of any background checks of candidates for the position of Agency Director shall be submitted only to the Commission. The results of any background checks of candidates for the position of Agency Complaint Investigator shall be submitted only to the Agency Director.

#### **2.46.060 – Mediation Program.**

Upon the agreement of the Chief, the Agency Director, the complainant(s) and the Subject Officer(s), the Agency Director shall appoint a qualified mediator with at least five (5) years of experience in mediating employment or other relevant disputes, from a conflict resolution company or association that employs mediators, to mediate a final resolution of the complaint in accordance with the Commission's established rules and procedures. Any Commissioner, City employee, or former Department sworn officer shall not be appointed mediator. Both the Chief and the Agency Director must approve of any settlement offer before it is proposed to the Subject Officer and/or before any such offer is accepted.

#### **2.46.070 – Authority of Public Ethics Commission.**

If the Agency does not receive the files and records requested pursuant to section 604 of the City Charter or pursuant to this Chapter 2.45 within fifteen (15) business days of its request, the Public Ethics Commission shall have the authority to investigate allegations that the head of the offending City department or agency failed to provide the requested files or records to the Agency as required by section 604 of the City Charter or this Chapter 2.45. Such requirements shall be subject to enforcement by the City in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

**SECTION 4.** Section 5.3 of Resolution No. 79235 which established the duties of the Community Policing Advisory Board and which amended Resolutions Nos. 72727, 73185, and 73916, is hereby amended, to add, delete, or modify sections as set forth below (sections number and titles are indicated in capitalized **bold type**; additions

are indicated by underscoring, deletions are indicated by strike-through type; portion of the provisions not cited or not shown in underscoring or strike-through type are not changed):

5.3 The Community Policing Advisory Board shall oversee, monitor, and report at least annually on the implementation of Resolution 72727 C.M.S. and shall provide an annual report of its recommendations to the Mayor, City Council, City Administrator, Police Commission and Chief of Police on further steps necessary to carry out its objectives. In addition, the Community Policing Advisory Board shall provide an annual presentation on its report to the Police Commission.

**SECTION 5. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 6. Effective Date.** This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS

City Clerk and Clerk of the Council  
of the City of Oakland, California

Date of Attestation: \_\_\_\_\_

# ITEM 8 (b)

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBERS KALB AND GALLO

CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**ADOPT AN ORDINANCE (1) ENABLING IMPLEMENTATION OF THE CITY CHARTER AMENDMENT CREATING THE OAKLAND POLICE COMMISSION AND THE COMMUNITY POLICE REVIEW AGENCY, (2) ESTABLISHING A CIVILIAN INSPECTOR GENERAL, AND (3) REQUIRING AN ANNUAL REPORT AND PRESENTATION BY THE COMMUNITY POLICING ADVISORY BOARD TO THE COMMISSION**

**WHEREAS**, On April 15, 1980, the City Council established the Citizens' Police Review Board (hereinafter, Board) with jurisdiction to review certain complaints alleging Oakland Police Department (hereinafter, Department) officer and park ranger misconduct, to conduct fact-finding investigations, and to make advisory reports to the City Administrator. On July 30, 1996, the City Council expanded the Board's jurisdiction to include complaints involving the excessive use of force, and bias based on an individual's legally protected status (race, gender, national origin, religion, sexual orientation or disability). In 2002, the City Council further expanded the Board's jurisdiction to include all complaints filed against police officers and park rangers, and expanded the Board's size from nine (9) members to twelve (12) members. The City Council also granted the Board the option of holding evidentiary hearings using three-member panels and permitted Board members to review confidential Oakland Police Department (hereinafter, Department) records in closed session. On November 12, 2002, the City Council passed Ordinance No. 12454 C.M.S., which further refined the Board's powers to include making recommendations to the City Administrator regarding litigated cases, and enlarged the amount of time for the Board to complete its investigations. However, the Board was not empowered to oversee Department policy or impose discipline; and

**WHEREAS**, In January 2003, the City entered into a Negotiated Settlement Agreement (hereinafter, NSA) with multiple plaintiffs who sued the City, alleging that Police Department officers violated plaintiffs' civil rights. Since implementation of the NSA, a federal monitoring team has audited – and continues to audit – the

Department's progress in complying with each of the fifty-two (52) tasks identified in the NSA; and

**WHEREAS**, While some important progress has been made in recent years, public perception persists that the Department and the City do not adequately hold its officers accountable for misconduct, leading to an erosion of public trust in this process; and

**WHEREAS**, Maintaining public trust and confidence in the Police Department is essential for the Department to be able to provide the highest level of service to the community. In order to increase the public trust and confidence in the Department, improvements should be made to the processes for providing Department oversight and accountability. Appointing qualified members of the public to a Police Commission (hereinafter, Commission), entrusting the Commission with oversight of the Department and requiring the Commission to hold public hearings all would increase public transparency, which in turn would build a higher level of trust and confidence in the services provided by the Department; and

**WHEREAS**, Major cities across the country, including New York City, Los Angeles, and San Francisco, as well as medium-size cities such as Albuquerque and Honolulu have civilian police bodies with varying degrees of oversight authority over their police departments. In recent years, more and more municipal jurisdictions have involved citizens in their law enforcement review systems, and highly publicized incidents of alleged or actual police misconduct and the years-in-the-making widespread public outrage over police misconduct, especially in African-American communities of color, has brought the issue of civilian oversight to center stage in the United States; and

**WHEREAS**, The National Association for Civilian Oversight of Law Enforcement, a nonprofit organization dedicated to promoting greater police accountability through the establishment or improvement of citizen oversight agencies, provides various resources on its website, including recommended standards and practices, which include the Police Oversight Principles of European Partners Against Corruption, which provides numerous recommendations for police oversight bodies including that they: (1) have independence from the executive branch of government; (2) are sufficiently separate from the hierarchy of the police subject to their oversight; (3) are governed by persons who are not currently serving as police officers; (4) have adequate finances and resources to perform their functions; (5) have full investigative powers regarding police misconduct allegations; and (6) are representative of a diverse population; and

**WHEREAS**, On November 8, 2016, the City of Oakland's voters passed Measure LL to add Section 604 to the Oakland City Charter, setting up the establishment of the Police Commission and the Community Police Review Agency and disbanding the Citizens' Police Review Board; and

**WHEREAS**, An enabling ordinance is a vital ~~companion component~~ component for of implementation of Measure LL, passed by the voters, because it provides more detailed information about the functions and duties of the Commission and Agency, and also because an enabling ordinance provides direction to the Commissioners and Agency staff regarding the operation of their respective entities; and

**WHEREAS**, While the Department currently has an in-house sworn Inspector General, one of the best models for on-going oversight of police discipline can be found in the City of Los Angeles' Office of Inspector General. The L.A. Inspector General is a civilian who is charged with conducting systemic reviews of the disciplinary process and reports directly to the City of Los Angeles' Police Commission to ensure a necessary level of independence. The creation of a civilian Inspector General reporting to the Commission came from the Christopher Warren Commission reforms following the protests and riots stemming in part from the Rodney King jury verdict; and

**WHEREAS**, The July 2016 Report of Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement, established in 2015 as an advisory body to the San Francisco District Attorney's office, recommended the establishment of an independent Office of the Inspector General for San Francisco's Police Department; and

**WHEREAS**, The establishment of the Commission creates an additional potential forum for the input of the Community Policing Advisory Board to be received;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** That the City Council hereby adopts the addition of Chapters 2.45 and 2.46 to the Oakland Municipal Code to enable the implementation of City Charter section 604 which establishes the Oakland Police Commission and the Community Police Review Agency, and to establish the Office of Inspector General and to appoint a civilian Inspector General who shall be responsible for its day-to-day operations.

**SECTION 2.** Title 2 of the Oakland Municipal Code is amended to add Chapter 2.45, *Oakland Police Commission*, which shall read as follows:

## **Chapter 2.45 - OAKLAND POLICE COMMISSION**

### **2.45.010 – Definitions.**

The following words and phrases whenever used in this chapter shall be construed as defined in this section:

“Ad hoc committee” shall mean a temporary committee formed by the Commission comprised of less than a quorum of Commission members to address a specific issue.

“Agency” shall mean the Community Police Review Agency.

“Appointing Authority” shall mean the Selection Panel established by section 604(c)(3) of the City Charter or the Mayor. “Appointing Authorities” shall mean both the Selection Panel and the Mayor.

“Chief” shall mean the Chief of Police of the Oakland Police Department.

“Commission” shall mean the Oakland Police Commission.

“Department” shall mean the Oakland Police Department.

“Misconduct” shall mean both a ~~Department sworn employee’s police officer’s~~ affirmative act that violates, and/or his or her failure to act in violation of, the Department’s policies, procedures or directives, including without limitation the Department’s Manual of Rules.

“OIG” shall mean the civilian Office of Inspector General created by this Chapter 2.45.

“Serious Incident” shall mean a ~~police officer~~Department sworn employee-involved shooting, death or serious bodily harm caused by the action and/or inaction of a ~~police officer~~Department sworn employee, in-custody death, and/or on-duty or off-duty criminal conduct of a sworn Department employee which rises to the level of a felony or Serious Misdemeanor.

“Serious Misdemeanor” shall mean any misdemeanor crime that, if convicted, could preclude active law enforcement personnel, or a ~~member of~~sworn employee of the Department, from successfully fulfilling the responsibilities of their job classification. Examples include those crimes that involve violence, intimidation, threats, sexual offenses, theft, dishonesty, possession of drugs, purchase, ownership or possession of a firearm in violation of California Penal Code section 12021(c)(1), and those crimes where bias based on any legally protected characteristic is a motivating factor.

“Subject Officer” shall mean the Department sworn employee who is the subject of a complaint of alleged Misconduct.

**2.45.020 – Creation of Police Commission & Repeal of Citizens’ Police Review Board.**

Oakland City Charter section 604 has established the Oakland Police Commission. Effective the sixtieth day after the City Council’s confirmation of the first group of Commissioners and alternates, Ordinance No. 12454 C.M.S., which created the Citizens’ Police Review Board, shall be repealed.

**2.45.025 – Conflict of Interest.**

The following persons shall not be eligible to serve as a Commissioner or as a member of the Selection Panel:

- A. Any attorney who represents a person or entity with a pending claim or lawsuit against the Department; or
- B. Any attorney who represented a person or entity that filed a claim or lawsuit against the Department and that claim or lawsuit was finally resolved during the previous year.

This section shall not apply to the Selection Panel members already appointed on the effective date of this Chapter 2.45.

**2.45.030 – Selection Panel.**

- A. To the extent practicable and with the exception of the first Selection Panel previously formed under City Charter section 604(c)(3), the Mayor and the City Council shall use best efforts to appoint individuals to the Selection Panel who are broadly representative of Oakland's diversity and who represent communities experiencing the most frequent contact with the Department.
- B. With the exception of the first Selection Panel previously formed under City Charter section 604(c)(3), Selection Panel members shall be residents of Oakland.
- C. The City Administrator shall post on the City's website the names of all Selection Panel members within four (4) business days of their appointment(s) being received by the City Clerk.
- D. The Selection Panel, with the assistance of the City Administrator, shall determine how to solicit candidates for the positions of Commissioner and alternate, and shall determine, consistent with City Charter section 604, what information candidates must submit as part of their applications.
- E. In accord with the City's record retention schedule, the Selection Panel shall maintain all electronic communications to, from and/or copied to any Selection Panel member regarding any matters within the Selection Panel's jurisdiction, and provide such communications to the City upon request.

**2.45.040 - Bylaws and Rules.**

The Commission may prepare its own Bylaws to govern its operations. Any such Bylaws shall be approved by a vote of not less than five (5) affirmative votes. To the extent required by law, the City will provide the employee unions with notice of such proposed bylaws prior to implementation.

**2.45.045 – Confidentiality of Personnel Information.**

The Commission, the Agency, the OIG and their staff shall maintain the confidentiality of Department sworn employee personnel records (as defined by California Penal Code section 832.7) as required by state and local law. Failure to maintain the confidentiality of Department

sworn employee personnel records, whether or not intentional, may subject Commission, Agency and OIG staff to discipline, up to and including termination of employment.

**2.45.050 – Designation of Alternates as Voting Members**

The Chair of the Commission may, in his or her discretion, designate an alternate as a temporary voting member if a Commissioner is absent from a meeting. Consistent with section 604 of the City Charter, there shall not be more than seven (7) voting members of the Commission at any given time.

**2.45.060 - Background Checks.**

In accordance with federal and state law, a background check shall be performed on the Mayor's and the Selection Panel's final candidates for the position of Commissioner and alternate before their names are submitted to the City Council for confirmation. The City Administrator's Office shall retain an independent contractor to perform these background checks, which shall include:

- A. Verification of educational and employment background, and any other information that may be verified by a public records search.

The results of the background check identified in subsection (A) above shall be treated as public records, and shall be considered by the appropriate Appointing Authority prior to submitting the names of the final candidates to the City Council for confirmation.

**2.45.070 – Functions and Duties of the Commission.**

In addition to the powers and duties described in section 604 of the Oakland City Charter, the Commission shall:

- A. In accord with the City's record retention schedule, maintain all electronic communications to, from and/or copied to any Commissioner or alternate regarding any matters within the Commission's jurisdiction, and provide such communications to the City upon request.
- B. Maintain the confidentiality of its business in accordance with state and local law, including without limitation, the confidentiality of documents it creates or receives as permitted by the California Penal Code 832.7 and the California Public Records Act (Cal. Gov't Code sec. 6250, et seq.), to the extent required by state and local law. A Commissioner's failure to maintain such confidentiality, whether or not intentional, may be considered "gross misconduct in office" for purposes of City Charter section 604(c)(10).
- C. Review and comment on the education and training the Department provides its sworn employees regarding the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues. The Commission shall

provide any recommendations for more or different education and training to the Chief who shall respond in writing.

- D. Prepare and deliver to the Mayor, the City Administrator and the Chief by ~~January~~ April 30 of each year, or such other date as set by the Mayor, a proposed budget for providing the education and training identified in subsection (C) above.
- E. Notwithstanding section 2.29.020 of the Oakland Municipal Code and in accordance with section 604(b)(10) of the City Charter, have the authority to remove the Chief, without the approval of the Mayor, by a vote of not less than five (5) affirmative votes and only after finding cause. For purposes of removing the Chief, "cause" shall be defined as any of the following:
  - 1. Continuing, intentional, or willful failure or refusal to perform the duties and responsibilities of the Chief of Police as required by any employment agreement with the City, the City Charter, the City's governing laws and regulations, or any laws, rules or regulations of any governmental entity applicable to the Chief's employment by the City or to City operations, including without limitation, the inability to perform the duties and responsibilities of the Chief of Police as aforementioned as a result of alcoholism or drug addiction; or
  - 2. Gross neglect of duties, material violation of any duty of loyalty to the City, or material violation of City or Department policy, including without limitation any policies or procedures pertaining to harassment and discrimination, after the Chief has received written warning of the neglect or violation and the Chief has failed to cure the neglect or violation within twenty (20) days; or
  - 3. Conviction by, or entry of a plea of guilty or *nolo contendere*, in a court of competent and final jurisdiction for (a) any crime involving moral turpitude, (b) any felony offense, (c) any crime which is likely to have a material adverse impact on the business operations or financial or other condition of the City, or (d) any crime which has resulted in imprisonment; or
  - 4. Failure or refusal to cooperate with any investigation involving employees of the Department; or
  - 5. Obstruction of any investigation of Department employee misconduct or criminal activity; or
  - 6. Refusal, which shall include ongoing failure, to administer or enforce any Department policy or procedure; or
  - 7. A material act of dishonesty, fraud, embezzlement, self-dealing, or other act of moral turpitude; or
  - 8. A material breach of confidentiality; or
  - 9. Loss of any professional license or other certification required by state or local law to perform the duties of the position of Chief of Police.
- F. Within ~~one hundred and eighty~~ two hundred and forty (240) days of the City Council's confirmation of the first group of Commissioners and alternates and on the anniversary of that date thereafter, notify the Chief regarding what information will be required in the Chief's annual report to the Commission which shall include, at a minimum, the following:

1. The number of complaints submitted to the Department's Internal Affairs Division (hereinafter, "IAD") together with a brief description of the nature of the complaints;
2. The number of pending investigations in IAD, and the types of Misconduct that are being investigated;
3. The number of investigations completed by IAD, and the results of the investigations;
4. The number of training sessions provided to Department sworn employees, and the subject matter of the training sessions;
5. Revisions made to Department policies;
6. The number and location of ~~officer~~Department sworn employee-involved shootings;
7. The number of Executive Force Review Board or Force Review Board hearings, and the results;
8. A summary of the Department's monthly Use of Force Reports;
9. Number of ~~officers~~Department sworn employees disciplined and the level of discipline imposed; and
10. The number of closed investigations which did not result in discipline of the Ssubject Oofficer.

The Chief's annual report shall not disclose any information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

- G. Conduct an annual performance review of the Inspector General. The Commission shall determine the criteria for evaluating the Inspector General's and the Agency Director's job performance, and communicate those performance criteria, in addition to any other job performance expectations, to both the Inspector General and the Agency Director one full year before conducting any evaluation of their job performances. The Commission may, in its discretion decide to solicit and consider, as part of its evaluation, comments and observations from the City Administrator and other City staff who are familiar with the Inspector General's and the Agency Director's job performance. Responses to the Commission's requests for comments and observations shall be strictly voluntary.
- H. Request that the City Attorney submit semi-annual reports to the Commission and to City Council which shall include a listing and summary of:
1. To the extent permitted by applicable law, the discipline decisions that were appealed to arbitration;
  2. Arbitration decisions or other related results;
  3. The ways in which it has supported the police discipline process; and
  4. Significant recent developments in police discipline.
- The City Attorney's semi-annual reports shall not disclose any information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.
- I. Provide policy guidelines to the Agency Director for assistance in determining case prioritization.
- J. Make available on its website, to the extent permitted by law:

1. The Commission's annual report;
2. The Chief's annual report;
3. The Agency's reports;
4. The Agency Director's monthly reports; and
5. The Inspector General's annual report.

No information shall be distributed using any print media, or posted using any electronic media, in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

- K. Direct the Agency to investigate a Serious Incident when requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote.
- L. Review the Agency's dismissal and/or administrative closure of all complaints of Misconduct involving Class I offenses, including any Agency investigative file regarding such complaints, and, in its discretion and by five (5) affirmative votes, direct the Agency to reopen the case and investigate the complaint. For purposes of this subsection, the definition of "Class I offenses" shall be the same as the definition of "Class I offenses" in the Department's Discipline Policy.
- M. In order for the Commission to have all information necessary to fulfill its duties under City Charter section 604(f)(1), direct the Chief to:
1. Within forty-eight (48) hours of knowing or having a Reasonable Suspicion that a Serious Incident has occurred, notify the Chair of the Commission, the Agency Director and the Inspector General. For purposes of this subsection, "Reasonable Suspicion" shall mean that, from the totality of the circumstances, there is a specific, articulable, and objective basis for suspecting personnel of criminal activity. There must be specific facts beyond the mere allegation of criminal misconduct. The Commission shall also direct the Chief to provide a confidential status report to the Chair of the Commission, the Agency Director and the Inspector General within ten (10) calendar days of the date on which the Serious Incident occurred, and a second confidential status report to the Chair of the Commission, the Agency Director and the Inspector General within forty-five (45) calendar days of the date on which the Serious Incident occurred.
  2. Brief the Commission Chair, the Agency Director and the Inspector General at least once a month regarding allegations of all Serious Incidents under investigation.
- N. In association with the Agency Director and in consultation with the Chief or the Chief's designee, establish rules and procedures for the mediation and resolution of complaints of Misconduct. To the extent required by law, the City will provide the employee unions with notice of such proposed bylaws prior to implementation.
- O. Receive any and all reports prepared by the Community Policing Advisory Board (hereinafter referred to as "CPAB") and consider acting upon any of the CPAB's recommendations for promoting community policing efforts and developing solutions for promoting and sustaining a relationship of trust and cooperation between the Department and the community.

- P. Review and comment on the Department's policy and/or practice of publishing Department data sets and reports regarding various Department activities, submit its comments to the Chief, and request the Chief to consider its recommendations and respond to the comments in writing.
- Q. Solicit and consider input from members of the public regarding the quality of their interactions with the Agency and the Commission.

**2.45.080 – Access to Documents.**

- A. Subject to applicable law, the Commission and the Inspector General shall have access to all Agency and Department files and records, with the exception of personnel records, and to all files and records of other City offices, departments and or agencies that are relevant and necessary to the performance of its duties, with the exception of personnel records.
- B. Subject to applicable law, the Commission shall have access to all Department files and records, with the exception of personnel records, and to all files and records of other City departments and agencies that are relevant to a Serious Incident. Notwithstanding the foregoing, the Commission shall have access to the personnel records necessary to perform its duties described in City Charter section 604(g)(3) and in section 2.45.070(K) of this Chapter of the Oakland Municipal Code.
- C. The Discipline Committees shall have access to all files, including personnel records, that are included in the Chief's and Agency's submissions, as described in City Charter section 604(g)(2) and in this Chapter 2.45.
- D. The Inspector General shall have access to all files, including personnel records, that are necessary to perform his or her duties as described in this Chapter 2.45.
- E. The Commission and the OIG shall follow Department policies and procedures regarding the release of videotape and audio tape recordings of alleged Class 1 violations committed by police officers.
- ~~D-F.~~ To the extent possible, any confidential documents, files and records shall be made available to the Commissioners, the Inspector General and the Discipline Committees in electronic format on a secure server. Each individual who has access to this server shall have his or her own password. Each page of any printed copies of confidential documents, records or files shall bear a watermark consisting of the name of the individual for whom the printed copies are made. All such copies must be stored in a secure place, and must be shredded when no longer needed. Upon expiration of his or her term, a Commissioner must return to the City any and all copies of confidential materials that have not been shredded.

**2.45.090– Meetings**

In conducting its meetings, the Commission shall comply with all requirements of the Brown Act, California Government Code section 54950, *et seq.*, and Article II of Chapter 2.20 of the Oakland Municipal Code.

- A. Consistent with City Charter section 604(d)(1), the Commission shall meet at least twice each month at an established time and place suitable to its purpose. Such meetings shall be designated regular meetings, and shall be held at City Hall. If the Commission determines, by a majority vote of those present at a regular meeting, that a second regular meeting in that month is not necessary, it shall provide public notice of the meeting cancellation as required by all applicable State and local laws. Video recordings of all open sessions of Commission meetings shall be aired on KTOP-TV10.
- B. Consistent with City Charter section 604(d)(1), at least twice each year, the Commission shall hold one of its regularly scheduled meetings at a location outside of City Hall. These offsite meetings shall be designated special meetings subject to the ten-day agenda notice requirement for purposes of Article II of Chapter 2.20 of the Oakland Municipal Code, and shall include an agenda item titled "Community Roundtable," or something similar. The purpose of the Community Roundtable agenda item shall be to solicit community testimony and other input in discussions regarding community policing, building trust between the community and the Department, and other similar and relevant subjects as determined by the Commission. The Commission shall consider inviting to each Roundtable individuals and groups familiar with the issues involved in building and maintaining trust between the Department and the community, including but not limited to representatives from the Department, members of faith-based groups, youth groups, advocacy groups, residents of neighborhoods that experience the most frequent contact with the Department and, to the extent practicable, formerly incarcerated members of the community.
- C. "Final actions," as defined by state and local open meeting laws, taken by the Commission in closed session shall be publicly reported with the vote or abstention on that action of every member present.

**2.45.100 - Office of Inspector General.**

Within one hundred and eighty (180) days after the City Council's confirmation of the first group of Commissioners and alternates, there shall be established, under the purview of the Commission, a civilian Office of Inspector General for the Department (hereinafter referred to as "OIG"). Within one (1) year after the City Council's confirmation of the first group of Commissioners and alternates, the Department's internal Office of Inspector General shall be renamed. The Commission shall be responsible for oversight of the OIG.

- A. The powers, functions and duties of the OIG shall be those assigned, authorized and directed by the Commission, and shall include conducting any audit or review of the Department necessary to assess the Department's performance and adherence to constitutional policing practices, and shall also include conducting any audit or review of the Department's policies and procedures, including any pattern of non-compliance with the foregoing, as necessary or helpful for the Commission to fulfill its duties under City Charter section 604(b)(4), (5) and (6).
- B. The Chief shall assign a sworn ~~officer~~ Department employee to act as a liaison from the Department to the OIG.

- C. The City shall allocate a sufficient budget for the OIG to perform its functions and duties as set forth in section 2.45.120 below, including budgeting one (1) full-time staff position comparable to the position of Police Program and Audit Supervisor. All OIG staff, including the Inspector General, shall be civil service employees in accordance with Article IX of the City Charter. All OIG staff shall report to the Inspector General. Except for the Inspector General, the Commission shall not have any authority to hire, supervise, evaluate or fire OIG staff.
- D. Within thirty (30) days after the first Inspector General is hired, the Policy Analyst then assigned to the Agency shall be transferred to the OIG.

**2.45.110 – Civilian Inspector General.**

- A. Within one (1) year of the City Council’s confirmation of the first group of Commissioners and alternates, the Commission, with the assistance of the Human Resources Management Department and in accordance with the City’s Civil Service Rules, shall prepare a job description and list of required qualifications for the position of civilian Inspector General. After all required approvals have been obtained for adding this position to the City’s Classification Plan (as defined by the City’s Civil Service Rules), the Commission, with the assistance of the City Administrator, shall be responsible for hiring the first and all subsequent civilian Inspectors General. The Inspector General shall be subject to a background check as described in section 2.45.060 above before hiring except that the results of the background check shall be submitted only to the Commission.
- B. Within ninety (90) days of his or her appointment, the Inspector General shall, at a minimum, receive the training described in City Charter section 604(c)(9) and in section 2.45.190(A) through (F) of this Chapter 2.45. The Commission may require any additional training it deems necessary for the Inspector General to perform the functions and duties of the OIG.
- C. The Inspector General shall report to the Commission, and may only be removed according to the City’s Civil Service Rules and any applicable memorandum of understanding between the City and a union, after an affirmative vote of five (5) members of the Commission. The City Administrator shall not have the authority to independently remove the Inspector General.
- D. The Inspector General shall be responsible for the day-to-day operations of the OIG, including but not limited to the supervision and direction of all OIG staff.
- E. The Inspector General shall be permitted to attend, as an observer, Executive Force Review Board, Force Review Board, and, to the extent permitted by law, *Skelly* hearings if he or she chooses to do so. The Inspector General shall not have any decision-making authority regarding the specific cases being heard, and shall maintain the confidentiality of the hearings as required by law. The Inspector General shall not be permitted to attend any Executive Force Review Board, Force Review Board, or *Skelly* hearing until he or she has completed the training identified in section 2.45.190(C).

**2.45.120 – Functions and Duties of the Office of Inspector General.**

The Commission shall have the authority to prioritize the functions and duties of the Office of Inspector General, which shall include, without limitation:

- A. Preparing an annual report, summarizing the results of the annual reviews of:
1. The Department's processes and procedures for investigating alleged Misconduct;
  2. The Department's processes and procedures for determining the appropriate level of discipline for sustained findings of Misconduct;
  3. The Agency's processes and procedures for investigating alleged Misconduct;
  4. The Agency's processes and procedures for determining the appropriate level of discipline for sustained findings of Misconduct;
  5. Trends and patterns regarding Department training and education, and the Department's use of any early warning system(s);
  6. Training and/or policy issues that arise during the investigations of complaints; and
  7. Trends and patterns regarding use of force and ~~officer~~Department sworn employee-involved shootings.

This annual report shall be presented to the Commission, the Mayor, the City Council's Public Safety Committee, the City Council and to the Chief and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.

- B. Monitoring and evaluating, on at least an annual basis, the number and percentage of sworn officers who have received in-service training on profiling and implicit bias, procedural justice, de-escalation, diplomacy, situational problem-solving, and work-related stress management, and make recommendations, as appropriate, to the Commission regarding changes to the Department's training programs.
- C. Developing and presenting a plan to the Commission to measure the performance of each element of the Department's discipline process for sworn Department employees.
- D. Completing all audits or reviews requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote. The Inspector General shall report all findings to the office that requested the audit or review.
- E. Monitoring, evaluating, and making recommendations regarding the Department's recruitment and hiring practices for sworn personnel.
- F. Monitoring, evaluating, and making recommendations regarding the Department's policies and procedures as requested by the Commission in furtherance of its duties under City Charter section 604(b)(4), (5) and (6).
- G. Monitoring, evaluating, and making recommendations regarding the Department's risk management practices.
- G.H. Any reports, plans, audits, reviews and recommendations generated by the OIG shall not disclose information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

### **2.45.130– Establishment of the Discipline Committee.**

A separate Discipline Committee will be established for each Department sworn employee discipline or termination case. The Chairperson of the Commission shall appoint three (3) Commission members to serve on a Discipline Committee, and shall designate one of these three (3) Commission members as the Chairperson. The Discipline Committees shall decide any dispute between the Agency and the Chief regarding the proposed or final findings or proposed or final level of discipline to be imposed on a Subject Officer.

- A. No Discipline Committee established by the Commission shall decide any dispute between the Chief and the Agency, as directed by section 604(g) of the City Charter, until each member of the Discipline Committee has completed: (1) orientation regarding Department operations, policies and procedures, including but not limited to discipline procedures for Misconduct, and (2) the training described in section 2.45.190(A) through (F).
- B. Membership in the Discipline Committees shall rotate for each police officer ~~officer~~ Department sworn employee discipline or termination case, as determined by the Chairperson of the Commission.

### **2.45.140 – Discipline.**

In accordance with section 604(g)(4) of the City Charter, all Department sworn employees shall be afforded their due process and statutory rights, including *Skelly* rights, as follows:

- A. With respect to Misconduct that is given a Class I designation pursuant to the Department's Discipline Policy, the Chief and the Agency Director shall include probative videotape and/or audiotape from their respective investigations in their submissions to the Discipline Committee pursuant to City Charter section 604(g)(2). The Discipline Committee shall have the authority to require the Chief and the Agency Director to provide any additional videotape, audiotape, and/or documents (including without limitation any existing transcripts of sSubject Officer or witness interviews) from the Agency's and the Department's investigation files that it deems relevant to its deliberations, and shall also have the authority to require the Chief and the Agency Director, or their non-attorney designees, to appear before the Discipline Committee to present their findings and recommendations and to answer questions.
- B. The record submitted to the Discipline Committee by the Chief regarding any Misconduct shall include the Subject Officer's history of discipline for the previous five (5) years. All documents submitted to the Discipline Committee by either the Agency Director or the Chief shall not include any redactions unless such redactions are required by law.
- C. After the investigation of a complaint has been completed and a decision has been made regarding the proposed findings and the proposed level of discipline (hereinafter referred to as the "Proposed Discipline"), either by agreement between the Chief and the Agency or by decision of the Discipline Committee,

the Chief shall send a Notice of Intent to Impose Discipline or a Notice of Intent to Terminate to the Subject Officer. Consistent with City policy and applicable law, the Department shall offer the Subject Officer a *Skelly* hearing to be conducted by an assigned *Skelly* officer. After completion of the *Skelly* hearing, the *Skelly* officer shall issue his or her report which shall include his or her recommendation regarding whether the Proposed Discipline should be affirmed or modified in any way.

- D. The *Skelly* report shall be submitted to the Chief and to the Agency Director if the Chief and the Agency Director agreed on the Proposed Discipline. The Chief and the Agency Director shall consider the *Skelly* report and consult with each other regarding the final set of findings and level of discipline to be imposed (hereinafter referred to as “Final Discipline”).
1. If the Chief and the Agency Director agree on the Final Discipline, the Chief shall send a Notice of Discipline or Notice of Termination to the Subject Officer.
  2. If the Chief and the Agency Director do not agree on the Final Discipline, the *Skelly* report shall be submitted to the Discipline Committee which shall decide the Final Discipline based solely on the record reviewed and considered by the *Skelly* Officer (which shall include the Notice of Intent to Discipline or Terminate with all attachments). The Discipline Committee shall also have the authority to require the Chief and the Agency Director, or their non-attorney designees, to appear before the Discipline Committee to present their recommendations and to answer questions. After determining the Final Discipline, the Discipline Committee shall direct the Chief to send a Notice of Discipline or Notice of Termination to the Subject Officer.
- E. The *Skelly* report shall be submitted to the Discipline Committee if the Discipline Committee decided the Proposed Discipline. The *Skelly* report shall also be submitted to the Chief and the Agency Director. The Discipline Committee shall consider the *Skelly* report in deciding the Final Discipline. After such determination, the Discipline Committee shall direct the Chief to send a Notice of Discipline or Notice of Termination to the Subject Officer.
- F. After the Final Discipline has been determined by either the agreement of the Agency Director and the Chief, or by the Discipline Committee, and to the greatest extent permitted by law, the complainant(s) shall be informed of the disposition of the complaint.
- G. The Discipline Committee shall maintain the confidentiality of all personnel and/or privileged information as required by State and local law. After the Discipline Committee has concluded its deliberations regarding the Proposed Discipline and/or the Final Discipline, it shall return all records and information it received (if not received electronically) to the party from which it received such records and information. Members of the Discipline Committee shall not retain copies of the records they receive from the Chief and the Agency, nor shall they publicly comment about, or discuss any personnel matter with anyone, including another member of the Discipline Committee, outside of Discipline Committee meetings, except as required by a valid subpoena. This subsection (G) shall not

preclude any member of a Discipline Committee from participating in any grievance procedure, including without limitation testifying in an appeal before the Civil Service Board or an arbitration or other type of administrative hearing.

- H. The Subject Officer may appeal the imposition of discipline or termination to the Civil Service Board. In addition, the Subject Officer may grieve the imposition of discipline or termination as prescribed in a collective bargaining agreement.

#### **2.45.150– Establishment of Other Committees**

The Commission must obtain City Council approval prior to the creation of any other standing committee. A proposal to create a standing committee of the Commission must include information regarding the costs associated with staffing the standing committee, if any, and the costs of complying with noticing and reporting requirements resulting from its establishment. City Council approval shall not be required for creating temporary or *ad hoc* committees.

#### **2.45.160 - Public Statements of the Commission**

The Commission may authorize one of its members to issue statements to the public regarding the Commission's official business, to the extent such business is not confidential or privileged under State or local law, only after the statement has been approved by an affirmative vote of not less than four (4) votes in a public meeting. Commissioners may publicly discuss their roles as Commissioners and the Commission's public and official business for the purpose of educating the community provided they adhere to the notice requirements of the Brown Act and Oakland's Sunshine Ordinance.

#### **2.45.170 - Election of Chairperson.**

At the ~~its~~ first regular meeting of each year, the members shall elect a chairperson and a vice-chairperson. Beginning February 1, 2019, the members shall elect a chairperson and a vice-chairperson at the first regular meeting of each year.

#### **2.45.180 - Staff assistance.**

- A. ~~Within one hundred and eighty~~ two hundred and forty (24180) days of the City Council's confirmation of the first group of Commissioners and alternates and on an ongoing basis as appropriate, the Commission shall provide the City Administrator with its proposal for the staff positions necessary to permit the Commission and the Agency to fulfill its functions and duties as set forth in this Chapter 2.45, Chapter 2.46, and as set forth in section 604 of the City Charter.
- B. Pursuant to City Charter section 604(e)(5) and, to the extent practicable, within one (1) week of the City Council's confirmation of the first group of Commissioners and alternates, the City Administrator shall assign an administrative staff person to provide administrative support to the Commission and to act as liaison between the Commission and the City Administrator's office.
- C. At a minimum, the City Council shall allocate the equivalent of an additional one-half of a full-time administrative position (0.5 FTE) to the City budget for the

purpose of providing adequate administrative support for the Commission. The administrative staff person described in this subsection (C) shall be hired, to the extent practicable, within ~~thirty-sixty~~ (630) days of the effective date of this Chapter 2.45, and shall report to the Commission. In addition, this administrative staff person may only be removed according to the City's Civil Service Rules and any applicable memorandum of understanding between the City and a union, after an affirmative vote of five (5) members of the Commission. Upon a vacancy, the Commission shall have the authority to fill this position. The City's Department of Human Resources Management shall provide timely assistance to the Commission for this purpose.

### **2.45.190 – Commissioner Training.**

Within ~~three (3)~~ six (6) months of appointment, or as soon thereafter as possible and with the exception of the first group of Commissioners and alternates, each Commissioner and alternate shall:

- A. Become familiar with City Charter section 604 and with Chapters 2.45 and 2.46 of the Oakland Municipal Code.
- B. Receive training in basic principles of constitutional due process and administrative hearing procedures;
- C. Receive training in the legal requirements for maintaining the confidentiality of personnel records and other confidential documents or information;
- D. Receive briefing on the Negotiated Settlement Agreement in the case of *Delphine Allen, et al. v. City of Oakland*, and all related court orders for so long as they remain in effect;
- E. Receive information regarding constitutional civil rights guaranteed to all citizens as such rights are affected by law enforcement; ~~and~~
- F. Receive training in the legal requirements of California's Political Reform Act (Cal. Gov't Code section 81000, et seq.), Oakland's Conflict of Interest Code (Oakland Municipal Code Chapter 3.16), California's Brown Act (Cal. Gov't Code section 54950, et seq.), Oakland's Sunshine Ordinance (Oakland Municipal Code Chapter 2.20), and California's Public Records Act (Cal. Gov't Code section 6250, et seq.);
- G. Receive training in open session in the legal requirements of California's Meyers Miliias Brown Act (Cal. Gov't Code section 3500, et seq.) (MMBA), the Public Employment Relations Board's administration of the MMBA, the City's Memoranda of Understanding with the Oakland Police Officers' Association and other represented City employees, the City's Civil Service Board, and other relevant City personnel policies and procedures; and
- F.H. Receive training in open session in the legal requirements of California's Public Safety Officers Procedural Bill of Rights Act (Cal. Gov't Code section 3300, et seq.), and other California Code sections pertaining to peace officers' rights.

The first group of Commissioners and alternates shall comply with the requirements of subsections (A) through (H) within twelve (12) months of their appointment.

In addition, within twelve (12) months of appointment, or as soon thereafter as possible and with the exception of the first group of Commissioners and alternates, each Commissioner and alternate shall:

- G-I. Receive the training and orientation specified by section 604(c)(9) of the City Charter;
- H-J. Participate in a Department “ride-along” and attend a police academy curriculum designed for them by the Chief after consultation with the Commission. The curriculum shall be designed so that criminal background checks will not be required for attendance;
- I-K. Complete the Department’s Implicit Bias Training, and Crisis Intervention Training;
- J-L. Complete Peace Officer Standards and Training (POST) Learning Domains 15 (Laws of Arrest) and 16 (Search and Seizure); and
- K-M. Receive training regarding racial equity.

The first group of Commissioners and alternates shall comply with the requirements of subsections (I) through (M) within eighteen (18) months of their appointment.

The City Administrator shall assist the Commission in scheduling and facilitating all training and orientation required by this section and by section 604 of the City Charter. Within the Commission’s budget there shall be a line item for attendance at conferences offered by organizations such as the National Association for Civilian Oversight of Law Enforcement (“NACOLE”).

**2.45.200 - Hearings**

It shall be the sole and exclusive responsibility of the Commission to determine the order and conduct of any public hearing, consistent with applicable law.

**2.45.210 – Authority of Public Ethics Commission.**

If either the Commissioner or the Inspector General does not receive the files and records requested pursuant to section 604 of the City Charter or pursuant to this Chapter 2.45 within fifteen (15) business days of its request, the Public Ethics Commission shall have the authority to investigate allegations that the head of the offending City department or agency failed to provide the requested files or records as required by section 604 of the City Charter or this Chapter 2.45. Such requirements shall be subject to enforcement by the City in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

**2.45.220– Reporting to City Council.**

The Commission shall submit its first annual, written report to the Mayor, City Council and the public within eighteen (18) months of the City Council’s confirmation of the first group

of Commissioners and alternates. The Commission's subsequent reports shall be submitted annually on or near the anniversary of that date.

**SECTION 3.** Title 2 of the Oakland Municipal Code is amended to add Chapter 2.46, *Community Police Review Agency*, which shall read as follows:

## **Chapter 2.46 - COMMUNITY POLICE REVIEW AGENCY**

### **2.46.010 – Definitions.**

The following words and phrases whenever used in this chapter shall be construed as defined in this section:

“Agency” shall mean the Community Police Review Agency.

“Commission” shall mean the Oakland Police Commission.

“Department” shall mean the Oakland Police Department.

“Misconduct” shall mean both a ~~police officer's~~ Department sworn employee's affirmative act that violates, and/or his or her failure to act in violation of, the Department's policies, procedures or directives, including without limitation the Department's Manual of Rules.

“Subject Officer” shall mean the Department sworn employee who is the subject of a complaint of alleged Misconduct.

### **2.46.020– Creation**

Oakland City Charter section 604 has established the Community Police Review Agency. It is in the public interest to facilitate the Agency's receipt of public complaints regarding ~~the alleged Misconduct of police officers.~~ Thus, some of the Agency staff should be located in a street-level or ground-floor, visible office that is accessible by public transportation. The Commission, in consultation with the Agency Director, shall determine the number of existing Agency staff who would work at such a location. Hours of operation for this location shall be clearly posted on the office door and inside the office. The address of this office location, together with hours of operation and a telephone number shall be posted on the City's website and on the Agency's website.

### **2.46.030 – Functions and duties.**

In addition to the powers and duties prescribed in section 604 of the Oakland City Charter, the Agency's functions and duties are as follows:

- A. Use the same complaint form as used by the Department in receiving all public complaints concerning alleged Misconduct, including complaints from

Department non-sworn employees. All complaints, wherever filed, shall be date-stamped and numbered sequentially. A copy of the numbered and date-stamped complaint shall be provided to the complainant and to the Department's Internal Affairs Division within one (1) business day of receipt.

- B. Make complaint forms available to the public by posting the forms and information about the complaint process on the Agency's website and by accepting the online filing of complaints and attachments via the Agency's website, and by making information about the complaint process available at other public locations to be determined by the Agency Director;
- C. Ensure that all investigators receive any necessary training in conducting fair and impartial investigations.
- D. Request the Commission to issue a subpoena, in accordance with City Charter section 604(b)(3), to compel a Subject Officer and any other sworn employee of the Department to fully cooperate with an Agency investigation. The Chief shall order all ~~officers~~ Department sworn employees subject to any subpoena issued by the Commission to comply with all requirements of the subpoena.
- E. Videotape the interviews of all Subject Officers who are alleged to have committed a Class I offense. For purposes of this subsection, the definition of "Class I offense" shall be the same as the definition of "Class I offense" in the Department's Discipline Policy.
- F. Request, without requiring, that the complainant(s) and witnesses of Class I allegations agree to be audiotaped or videotaped if, in the Agency's discretion, its investigation would benefit from such taping.
- G. In consultation with and upon the approval of the Commission, establish rules and procedures for the operation of its business including, but not limited to, procedures for the intake of complaints.
- H. No less than twice a year and as permitted by applicable law, issue a report to the Public Safety Committee which shall include the following information:
  - 1. The number of complaints submitted to the Agency together with a brief description of the nature of the complaints and the identification of the Council District from which the complaint originated;
  - 2. The demographic profiles of the complainants to the extent that information exists or is voluntarily provided by the complainants;
  - 3. The number of the Agency's pending investigations, and the types of ~~police officer~~ Misconduct that is being investigated;
  - 4. The number of investigations completed by the Agency, the results of the investigations, and the amount of time spent on the investigations;
  - 5. The number of ~~officers~~ Department sworn employees for whom sustained findings of Misconduct were made and the level of discipline proposed;
  - 6. The number of closed investigations which did not result in sustained findings and/or discipline of the Subject Officer;
  - 7. The number of cases referred to mediation;
  - 8. The number of cases in which the Agency failed to meet (a) the one-hundred-and-eighty-day (180) goal specified by City Charter section 604(f)(3), and/or (b) the deadline specified by California Government Code section 3304; and

9. The number of times a Department employee failed to comply with the Agency's request for an interview or for the production of documents, and the number of times a Department sworn employee failed to comply with a valid subpoena, and whether discipline was imposed for any such non-compliance.

**2.46.040 – Agency Director.**

The Agency Director shall report to, and be supervised by, the Commission, and shall be responsible for the day-to-day operations of the Agency. The Agency Director's job responsibilities shall include, but not be limited to, the following:

- A. Identifying the staff positions, in addition to the position of Investigator, necessary to perform the Agency's functions and duties;
- B. Assigning complaints to investigators, consulting with investigators regarding, and monitoring the progress of, their investigations;
- C. Monitoring the workload of all Agency staff;
- D. Reporting to the Commission once a month regarding the Agency's pending cases. The following information shall be included in the Agency Director's monthly written report:
  1. The case number;
  2. The name of the complainant;
  3. The initials of the investigator assigned to investigate the complaint;
  4. The date the complaint was filed with the Agency and the date the complaint was filed with the Department's Internal Affairs Division;
  5. The date by which the investigation must be completed if the Agency is to meet the one-hundred-and-eighty-day (180) goal specified by City Charter section 604(f)(3);
  6. The deadline by which the investigation must be completed, as specified by California Government Code section 3304;
  7. The date of the incident that is the subject of the complaint; and
  8. If City Charter section 604(f)(1) requires the Agency to investigate the complaint, whether the complaint involves uses of force, in-custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, and First Amendment assemblies. If City Charter section 604(f)(1) does not require the Agency to investigate the complaint, a brief, general description of the type of complaint. This brief, general description must be similar in length and generality to the description of the types of complaints the Agency is required to investigate, as stated in City Charter section 604(f)(1); and
  9. The number of times the Department and/or a Department employee has refused to comply with a written request for information, and the number of times a Department sworn employee refused to comply with ~~ora~~ a valid subpoena.
- E. Conducting annual job performance evaluations of all Agency staff;

- F. Responding to questions and issues raised by the public, as permitted by applicable law; and
- G. Any other duties assigned by the Commission, consistent with the Agency's powers and duties as described in section 604 of the City Charter and subject to any constraints imposed by the Agency's budget.

**2.46.050 – Background Checks.**

In accordance with federal and state law and consistent with section 604(e)(7) of the City Charter, background checks shall be performed on all new Agency Complaint investigators and on the Agency Director, before hiring. The City Administrator's Office shall retain an outside person or entity to perform these background checks, which shall include:

- A. Verification of educational and employment background, and any other information that may be verified by a public records search; and
- B. Results of a criminal records search.

The results of the background checks may be used solely for the purpose of evaluating the candidates for the Agency Director and for Agency Complaint investigator. The results of any background checks of candidates for the position of Agency Director shall be submitted only to the Commission. The results of any background checks of candidates for the position of Agency Complaint Investigator shall be submitted only to the Agency Director.

**2.46.060 – Mediation Program.**

Upon the agreement of the Chief, the Agency Director, the complainant(s) and the Subject Officer(s), the Agency Director shall appoint a qualified mediator with at least five (5) years of experience in mediating employment or other relevant disputes, from a conflict resolution company or association that employs mediators, to mediate a final and binding resolution of the complaint in accordance with the Commission's established rules and procedures. Any Commissioner, City employee, or former Department sworn officer shall not be appointed mediator. Both the Chief and the Agency Director must approve of any settlement offer before it is proposed to the Subject Officer and/or before any such offer is accepted.

**2.46.070 – Authority of Public Ethics Commission.**

If the Agency does not receive the files and records requested pursuant to section 604 of the City Charter or pursuant to this Chapter 2.45 within fifteen (15) business days of its request, the Public Ethics Commission shall have the authority to investigate allegations that the head of the offending City department or agency failed to provide the requested files or records to the Agency as required by section 604 of the City Charter or this Chapter 2.45. Such requirements shall be subject to enforcement by the City in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

**SECTION 4.** Section 5.3 of Resolution No. 79235 which established the duties of the Community Policing Advisory Board and which amended the provisions

establishing the Community Policing Advisory Board, as passed by Resolution No. 72727 and amended by Resolutions Nos. 72727, 73185, and 73916, and, most recently, 79235, is hereby amended, to add, delete, or modify sections as set forth below (sections number and titles are indicated in capitalized **bold type**; additions are indicated by underscoring, deletions are indicated by strike-through type; portion of the provisions not cited or not shown in underscoring or strike-through type are not changed):

5.3 The Community Policing Advisory Board shall oversee, monitor, and report at least annually on the implementation of Resolution 72727 C.M.S. and shall provide an annual report of its recommendations to the Mayor, City Council, City Administrator, Police Commission and Chief of Police on further steps necessary to carry out its objectives. In addition, the Community Policing Advisory Board shall provide an annual presentation on its report to the Police Commission.

**SECTION 5. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 6. Effective Date.** This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, AND PRESIDENT REID

NOES -

ABSENT -

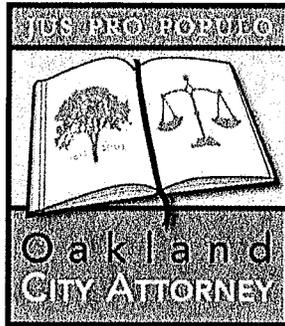
ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS

City Clerk and Clerk of the Council  
of the City of Oakland, California

Date of Attestation: \_\_\_\_\_



**CITY OF OAKLAND**  
**OFFICE OF THE CITY ATTORNEY**  
**BARBARA J. PARKER, CITY ATTORNEY**

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**REQUEST FOR QUALIFICATIONS  
FOR THE LEGAL SERVICES:**

**Outside Counsel for Community Police Review Agency**

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**Please respond by January 5, 2018**

**Contact Person: Mark Forte**  
**Phone Number: (510) 238-2960**  
**E-mail Address: [mforte@oaklandcityattorney.org](mailto:mforte@oaklandcityattorney.org)**

Issued: November 2017

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# INTRODUCTION

In November 2016, Oakland voters overwhelmingly passed Measure LL, an amendment to the Oakland City Charter which established a seven-member Oakland Police Commission (“Commission”) and a Community Police Review Agency (“CPRA”). The Office of the Oakland City Attorney is responsible for providing all legal services for the City of Oakland Police Commission and is responsible for engaging outside counsel to advise the CPRA in conjunction with the City Attorney’s Office.

The CPRA will receive, review and prioritize all public complaints concerning the alleged misconduct of police officers, and will replace Oakland’s Citizens’ Police Review Board. The Agency’s day-to-day operations will be overseen by a Director, who in turn will report to the Commission. In accordance with Measure LL, the City Attorney wishes to retain outside counsel to provide the CPRA advice in the following two areas: 1) police misconduct investigations; and 2) recommending discipline. Interested firms/individuals must be available to commit a significant amount of time to the CPRA, and must not regularly defend law enforcement officers.

The City Attorney requests detailed information regarding the qualifications of attorneys or law firms interested in providing legal services to the CPRA to make this appointment and to establish a back-up list of qualified attorneys or law firms from which future outside counsel may be selected.

In general, the City Attorney is interested in hiring a diverse group of firms/individuals that will provide high-quality services while containing legal costs. We seek to build ongoing relationships with firms that share our commitment to quality and to cost containment, as well as expand and strengthen our relationships with Oakland-based firms that are committed to diversity.

Selection of outside counsel for all matters is based on the quality of their work, commitment to controlling costs, adherence to budgets, and commitment to providing equal opportunities for minorities and women, persons with disabilities and regardless of sexual orientation. We encourage innovative approaches to billing proposals, whether fixed rate per project, blended hourly rate per project, discounted rates, contingency fees, or some other method. When we select a firm to represent the City of Oakland we decide which attorneys will be working on our matters, and we require advance approval of any changes in assignments.

All firms that we retain must enter into Oakland’s standard Professional Services Agreement (PSA), and complete and provide the following schedules and documentation.

- Combined Schedules: C-1: Declaration of Compliance with the American Disabilities Act, Schedule P: Nuclear Free Zone Disclosure, Schedule U: Compliance Commitment Agreement, Schedule V: Affidavit of Non-Disciplinary or Investigatory Action, Schedule;
- Schedule B-2: Arizona Resolution
- Schedule D: Ownership Ethnicity and Gender Questionnaire;
- Schedule E: Project Consultant Team;
- Schedule N: Declaration of Compliance for the City’s Living Wage Ordinance;
- Schedule N-1: Equal Benefits Declaration of Nondiscrimination,;
- Schedule O: Contractor Acknowledgment of City of Oakland Campaign Contribution Limits;
- Proof of Insurance on the ACORD form showing the types and amounts of and insurance coverage required in Schedule Q, Insurance Requirements; and
- Current Oakland Business Tax certificate or application in progress.

In addition to the PSA, selected firms will be required to enter into a Scope of Service/Retention Agreement for each specific matter. Each Scope of Service / Retention Agreement includes a written work plan or case handling plan, a capped "not to exceed" amount and the names of the individuals in the law firm assigned to work on the matter and their hourly rates. The Scope of Service / Retention Agreement becomes a part of the overall agreement and cannot be modified without the advance written approval of the City Attorney, a Chief Assistant City Attorney or a Special Counsel. The Office of the City Attorney will not approve bills/invoices that are in excess of budget, absent prior approval. All invoices must set forth the billing amount, the cap, and the amount remaining on the contract. The documents listed above are included as an attachment.

Selected firms are required to be current on the payment of Oakland business taxes. This tax is based on income from work the firm performs in Oakland. Selected firms must have or obtain an Oakland Business Tax Certificate regardless of where the firm is located. See the attached Outside Counsel Policy Guide for more information.

## **REQUESTED INFORMATION (FIRM DATA & INFORMATION)**

Respondents should provide the following background information for each attorney in the firm who wishes to be qualified to provide advice or assist in providing advice to the CPRA. Please provide two copies of the responses and please identify the partner or shareholder who would be in charge of the representation. For purposes of providing background information, "peace officers" include all law enforcement officers, including but not limited to police officers, deputy sheriffs, highway patrol officers, and corrections officers,

1. Describe your professional experience in the area of peace officer misconduct, including any experience in civil rights litigation, *Pitchess* motion practice, *Brady* disclosures, the Public Safety Officers Procedural Bill of Rights, internal affairs investigations, and arbitration of peace officer discipline.
2. Describe your professional experience in the area of employee misconduct generally, including any experience in workplace investigations, employment litigation, and employee discipline and termination.
3. Describe any other experience that may be relevant to advising the CPRA on investigations and discipline.
4. Have you ever represented a client in a claim or lawsuit against a peace officer department or agency? If so, please describe the timing and nature of the representation(s).
5. Have you ever represented a peace officer department or agency in a law suit? If so, please describe the timing and nature of the representation(s).
6. Have you ever represented a peace officer in a civil or criminal matter for alleged on-the-job misconduct? If so, please describe the timing and nature of the representation(s).
7. Have you ever represented a peace officer or a peace officer employee association in a discipline matter or collective bargaining dispute? If so, please describe the timing and nature of the representation(s).



In addition, Respondents should include the following information:

1. Your office's availability to perform the work of outside counsel to the CPRA, including number of hours per week/month the lead attorney can personally commit, availability of attorneys for on-site meetings and consultations, any regular time constraints or competing commitments, and availability of associate attorneys to advise the CPRA in the absence of the lead attorney.
2. The diversity of the firm in terms of women, minorities, persons with disabilities, sexual orientation (LGBT), etc..
3. A description of the nature and scope of specific projects handled by each qualified attorney, or significant matters that may be relevant to representation of the City of Oakland in such disputes.
4. An agreement not to engage in litigation against the City of Oakland or represent clients that have interests that are directly adverse to the City of Oakland without first informing the Office of the City Attorney and obtaining written permission from City to do so.
5. A firm resume or brochure.

## **FEE STRUCTURE**

Respondents should provide hourly rates for each attorney seeking qualification, as well as paralegals and other professionals who will assist in the representation.

The hourly rate quoted should include all salary and compensation, and all overhead expenses, profits and other employee costs, including but not limited to clerical and word processing expenses. Respondents should list all expenses they propose to bill in addition to legal fees and the basis for such expenses. The contract will provide for usual and customary reimbursement of third party costs based on the actual expense. The City does not reimburse for additional overhead on third party costs.

If rates are to be adjusted during the course of representation, the method for such adjustment should be described. Respondents should include alternatives to hourly billing, including fixed price representation and contingency fee arrangements. The City Attorney will establish with selected firms legal fees and expense budgets for each assigned matter. Please see the attached Outside Counsel Policy Guide for more information.

## **REVIEW OF SUBMISSIONS**

The City Attorney's Office will develop a list of firms to conduct work on behalf of the Office based upon its evaluation of the responses to this Request for Qualifications. Price will not be the controlling factor in selecting firms for the list, but price will be a factor in making work assignments. A firm is not entitled to be placed on the list or entitled to work solely on the basis of submission of a low price quotation. The City Attorney will evaluate the responses in the areas of Scope of Service / Scope of Representation, Firm Data and Information and Fee Structure.

Once the list is established, specific firms and individual attorneys may be selected from the list for execution of the PSA, required schedules and Scope of Service / Retention Agreement as the need for legal services occurs or in anticipation of the need for such services. Execution of the PSA and related documents will not guarantee that any case or matter or the number of cases or matters will be assigned to outside counsel. The decision to retain outside counsel will be that of the City Attorney on a case-by-case or matter-by-matter basis. Contracts will remain in effect for a period of not less than one year from the date of execution thereof unless they are terminated before expiration by providing written notice, or unless they are renewed or extended. Fee

structures should take this time period into account.

## **RESPONDENT'S PERSONNEL**

The City Attorney intends to reserve the right to designate a specific attorney(s) in a contracting law firm to work on a specific case or matter as lead counsel or as associate lead counsel for the services rendered pursuant to any contract, and further intends to reserve the right to terminate the contract if the lead counsel leaves employment of the firm.

## **CONFIDENTIALITY OF PROPOSAL INFORMATION WAIVER**

Respondents specifically and categorically agree that, as a condition for the opening and review of their responsive submittals, the information relating to fees and fee structure submitted by every other respondent is confidential and proprietary information insofar as such Respondent is concerned.

Respondents are further advised that all the terms and conditions, including fees and fee structures, forming part of any agreement entered into shall, upon such agreement being executed, become a public record of the City and subject to full disclosure, and each Respondent waives any right to object to any such disclosure.

## **CITY'S RESERVATION OF RIGHTS**

This Request for Qualifications does not constitute a commitment by the Office of the City Attorney or by the City Attorney to enter into any agreement or contract, or to pay any costs associated with the preparation of responses, submittals or other documents or any related-work by any Respondent. The City Attorney reserves the right to enter into agreements for legal services with persons or firms who do not respond. The City Attorney further reserves the right to waive responses to any part of this request if, in its sole judgment, it determines that it is in the best interests of the City to do so. The City Attorney may require any Respondent to participate in negotiations and to submit such other information or documentation as it may deem necessary as conditions of awarding a contract. The City Attorney reserves the right to vary or waive requirements for different Respondents as shall fit the City's needs.

## **STATEMENT OF INTEREST AND QUALIFICATIONS (SOQ)**

Submit Proposal to:

City of Oakland, Office of the City Attorney  
One Frank H Ogawa Plaza, 6th Floor Oakland, CA 94612

2 copies of the SOQ must be enclosed in a sealed package and marked as follows:

Confidential Documents / Attn: Mark Forte

For questions concerning this SOQ contact [mforte@oaklandcityattorney.org](mailto:mforte@oaklandcityattorney.org)

# **CITY OF OAKLAND OUTSIDE COUNSEL POLICY**

The Office of the Oakland City Attorney (OCA) brings affirmative litigation to protect the civil and human rights of Oakland residents. The City Attorney retains outside counsel for three types of matters or cases: (1) cases that require specialized expertise that our office does not have in-house; (2) cases that present conflict of interest issues; and, (3) cases that we cannot handle due to lack of capacity due to reductions to the City Attorney's Office budget. The City of Oakland engages Outside Counsel only through the Office of the City Attorney.

## **SELECTION OF COUNSEL**

The goal is to establish a list of qualified firms and individuals in a variety of practice areas for work that we may need during a fiscal year. We are interested in hiring a diverse group of firms/individuals that will provide high-quality services and that are dedicated to containing legal costs. We seek to build ongoing relationships with firms that share our commitment to quality and cost containment, as well as expand and strengthen our relationships with Oakland-based firms, small firms and firms that are committed to diversity.

Selection of outside counsel for all matters - large and small - is based on the quality of their work, commitment to controlling costs, adherence to budgets and commitment to providing opportunities for minorities, women, and persons with disabilities, regardless of sexual orientation. We encourage innovative approaches to billing, fixed rate per project, blended hourly rate per project, discounted rates, contingency fee arrangements, etc.

When we select a firm to represent the City we decide which attorneys will be working on our matters, and we require advance approval of any changes in assignments.

## **GENERAL EXPECTATIONS**

It is the policy of OCA that the City Attorney has the ultimate responsibility for managing every legal matter affecting the City of Oakland. All strategic and tactical decisions must be approved in advance by the responsible in-house attorney. It is expected that firms hired as outside counsel observe the highest ethical standards when representing the City and that potential conflicts be discussed with OCA as soon as they are recognized. Outside counsel must fully understand the objectives to be achieved and their role in achieving them. This includes participation in establishing a strategy and a budget.

Outside counsel is to keep OCA advised of significant developments as they occur, and obtain the approval of the City Attorney, Assistant City Attorneys or Special Counsel prior to performing services that would cause the contractual budget to be exceeded. Further, outside counsel must avoid overstaffing, rotating the attorneys assigned to the City's matters, and multiple representation at meetings, depositions, hearings and court appearances. We discourage changes in the individual attorneys who are working on our matters and we must be consulted in advance of any proposed changes.

Drafts of all briefs and submissions to courts and agencies should be provided to the responsible in-house attorney. It is important that drafts be received in adequate time for review and comment. OCA also expects to receive the final version of briefs, filings and legal memos.

## **CONFLICTS OF INTEREST**

It is expected that OCA will be notified immediately if outside counsel becomes aware of an actual or potential conflict. OCA recognizes that on occasion outside counsel will be asked to represent clients whose interests are inconsistent with the City's, and that outside counsel may even be asked to represent parties whose interests are in direct conflict with the City. OCA will generally waive conflicts where no issues of significant City policy are involved and where there is no connection between matters in which outside counsel has represented the City and matters in which outside counsel has been retained by other clients. Whenever OCA waives a conflict, the waiver will be conditioned on written agreement from the other client that it will not object to outside counsel representing the City in any pending or future matter. OCA generally will **not** waive a conflict if the matter is related to a matter in which outside counsel has represented the City, or if your firm has access to relevant confidential information of the City, or if your representation of the other client involves issues of important City of Oakland policy.

## **ASSIGNMENT OF ATTORNEY**

Before OCA contracts with outside counsel, OCA expects a commitment with respect to the attorneys who will be representing the City. If it later becomes necessary to substitute an attorney or add additional attorneys, outside counsel must receive prior approval before doing so. Significant roles should not be given to other attorneys without OCA's prior concurrence.

While OCA expects senior attorneys to perform those tasks that require substantial experience, OCA expects that outside counsel will attempt to minimize legal expenses by relying on junior attorneys and paralegals for less demanding tasks.

## **STRATEGY AND BUDGET**

For every new matter outside counsel and the responsible in-house attorney are required to prepare a strategy and a budget. The budget should estimate total fees and expenses to see the matter to its conclusion. If outside counsel anticipates a change in the budget after the agreement is executed outside counsel must discuss it with the City Attorney, Special Counsel or an Assistant City Attorney before the work is done or the expense is incurred. OCA will not approve bills/invoices that are in excess of budget absent prior approval.

Litigation strategy should identify alternate methods of disposing of the case, including ADR (Alternative Dispute Resolution) and settlement. An outline should be made of the proposed course of litigation, including dispositive pretrial motions, the scope of discovery and the trial strategy. If it appears that a case will go to trial, an estimate of costs should be sent to the responsible in-house attorney no later than the close of discovery, if possible. The detail of all plans (litigation and otherwise) will be dictated by the significance of the matter.

## **LITIGATION**

Advance approval from the City Attorney, Special Counsel or an Assistant City Attorneys is required before:

- Preparing pretrial motions;
- Preparing a cross-complaint which adds new parties to the action; Selecting and retaining expert witnesses;
- Preparing motions during trial, post-trial motions or appeals;
- Undertaking any unusual activity, such as a major research memorandum;
- Agreeing to alternative dispute resolution processes;
- Agreeing to settlement.

Outside counsel must consult with the in-house attorney concerning the strategy for taking depositions and other discovery. The deposition plan should include a brief explanation of the proposed deponent's location, his or her involvement in the matter, and the purpose of the deposition.

Outside counsel must exercise restraint in discovery and legal research conducted in routine small matters. We will not return to a firm that allows costs to approach - much less exceed- the City's exposure or potential recovery.

Litigation counsel must evaluate ADR as substitute for full-scale litigation. OCA expects that ADR techniques will be given active consideration from the commencement of litigation. OCA does not view ADR as an alternative to be considered only when trial is imminent and after months or years of costly discovery and pretrial battles.

## **RATE STRUCTURE**

Billing rates will be established at the outset of each matter. In establishing the billing rates it is expected that outside counsel will consider the competitive climate in the practice of law and the fact that OCA assures prompt payment.

Changes in billing rates must obtain our advance consent and the existing agreement will need to be amended. OCA assumes that the rates agreed upon are as low as those offered to any other government/public agency client; if any other clients enjoy more favorable billing rates, OCA expects to be told how to qualify for similar billing treatment.

If the billing method is hourly rates, the rates should contain all overhead and internal charges associated with outside counsel's practice, such as administration, secretarial, docket, word processing, accounting, library and other clerical time. If outside counsel customarily makes separate charges for any of these functions; the billing arrangement must be specifically approved in advance by the responsible in-house attorney and the amount must be factored into the overall budget. OCA expects that the hourly rates of outside counsel that bill separately for secretarial or other services will be less than those of competitive firms that include all overhead in their billing rates.

## **BILLING/INVOICING**

Separate bills/invoices are required for each specific matter. Absent an express agreement to the contrary, bills/invoices must be submitted monthly, unless another arrangement is agreed to in advance, or unless the matter is inactive.

All bills/invoices should include hours spent (to nearest fraction), brief description of the services rendered and the individual who provided the services. A summary of the total hours by individual with his/her billing rate should also be included.

All bills/invoices for services and disbursements must conform to the format of the budget per the Scope of Service Agreement, i.e., the bill/invoice must be in a form that will enable the Office of the City Attorney to compare the items that made up the budget with the items that appear on the bill/invoice.

All bills/invoices must include an accounting showing the original budget amount per the Scope of Service Agreement the billed/invoiced amounts to date and the amount remaining on the original budget. Bills not including this accounting will be returned unpaid.

OCA will not approve bills/invoices that are in excess of budget absent prior approval.

If travel time is devoted to working for one or more clients in addition to the City, OCA should not be billed for the time devoted to other clients. Billing for time spent in transit should not include time that would be spent in normal commute to your office unless agreed to in advance, OCA should not be billed for time away from home or the office, which is not in transit or spent performing legal services.

Any travel that requires an overnight stay or transportation by an airline must be approved in advance. If an overnight stay is necessary, OCA has the right to approve the accommodations. Reimbursement for meals will be made at the City's per diem rate (Breakfast \$11.00, Lunch \$16.00 and Dinner \$29.00 or \$56.00 per day). If airline travel is necessary, the OCA will reimburse at the coach rate.

As noted above, bills/invoices for disbursements must be detailed and must reflect only the amounts that were paid.

If outside counsel charges separately for fax services, duplicating, computer-assisted research, for a special word-processing project that was approved in advance, the bill/invoice must show the way in which the charge was developed (for example, in the case of fax and duplicating charges, the bill/invoice must show the number of pages and the per-page charge; in the case of Westlaw or Lexis research the bill/invoice must show the amount that was charged to outside counsel).

All disbursement charges must be accompanied by a copy of the invoice or statement to verify the charges. OCA will not pay charges that exceed the market rate for any service such as messenger, depositions, expert witness, etc.

## **COMMUNICATION**

Outside counsel must contact the responsible in house attorney if any issue arises that is not covered by this policy, or if outside counsel wishes to deviate from any of the stated policies.

